Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

REPLY COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA"), by its attorneys, hereby submits its reply comments on the Further Notice of Proposed Rulemaking in the above-captioned docket.[1] Many commenters in this proceeding support a competitively neutral, nationwide system of cost recovery that requires carriers to bear their own carrier-specific costs of implementing number portability.

I. INTRODUCTION AND SUMMARY

In the *Further Notice*, the Commission sought comment on cost recovery schemes for the implementation of long-term telephone number portability. In particular, the FCC sought comment on how the following costs should be recovered: (1) the costs of the facilities shared by all carriers for the provision of number portability (*e.g.*, building and administering the regional databases);[2] (2) direct carrier-specific costs (*e.g.*, purchasing the

[1] FCC 96-286 (July 2, 1996) ("*Further Notice*").

[2] *Further Notice*, ¶¶ 212-220.

necessary switch software);[3] and (3) indirect carrier specific costs (*e.g.*, upgrading SS7 capabilities or adding intelligent network or advanced intelligent network capabilities).[4]

In its opening round comments, PCIA urged the Commission to adhere to the statutory command that the cost of implementing number portability "shall be borne by all telecommunications carriers on a competitively neutral basis."[5] Specifically, PCIA noted that a competitively neutral cost recovery mechanism should take into account the extent to which different classes of carriers are obligated to provide number portability. Under this analysis, carriers -- such as messaging providers and non-covered SMR providers -- that are not required to offer number portability should not be required to fund its implementation.

PCIA further urged the Commission to establish a nationwide, centralized means of collecting and disbursing the number portability funds. Such national pricing and funding principles will provide for uniformity between states, thereby encouraging competition among national service providers. By eliminating redundant functions, this national funding mechanism also should promote efficiency in operation and reduce the overall size of the fund.

Finally, PCIA requested that the recovery of both shared costs and carrier specific costs be implemented in an efficient, non-discriminatory, and equitable manner. Adherence to these principles requires that: (1) all carriers that benefit from number portability contribute fairly to financing shared facilities; (2) individual carriers must finance their own

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[3] *Id.*, ¶¶ 221-225.

[4] *Id.*, ¶¶ 226-229.

[5] 47 U.S.C. § 251(e)(2).

carrier-specific costs related to number portability, but may do so in a flexible fashion; and (3) individual carriers must bear carrier-specific costs not related to number portability as self-financed network upgrades.

The record reflected a high degree of support for the aforementioned positions. First, almost all commenters agreed that competitive neutrality must be the keystone of any cost recovery mechanism. A number of parties also joined PCIA in stating that a corollary of competitive neutrality is that carriers that do not benefit from number portability should not be required to fund its implementation. This is especially true for the low profit margin messaging and non-covered SMR industries, for which the cost of number portability will have a significant economic impact.

Second, many parties agreed with PCIA that national cost recovery and pricing rules were preferable to a state-by-state solution, especially for the wireless industry. Nationwide rules are essential for the wireless industry because of the existence of multi-state service areas and multi-state databases for billing, roaming, and anti-fraud purposes. Further, for both wireless and wireline carriers, such national standards will encourage both efficient operations and competition.

Finally, a number of parties joined PCIA in requesting that carriers be required to finance their own network upgrades for carrier-specific costs directly related to number portability. These parties opposed any sort of cost "pooling" plan because such a plan would: (1) encourage inefficient purchasing and network upgrade decisions; (2) punish carriers that had the foresight to invest in state of the art network technology prior to this proceeding while rewarding less forward-looking carriers; and (3) increase administrative costs while encouraging carriers to abuse the reimbursement process. Clearly, none of these results are in the public interest.

II. ANY COST RECOVERY SCHEME MUST BE COMPETITIVELY NEUTRAL AND SHOULD EXEMPT CARRIERS THAT DO NOT BENEFIT FROM NUMBER PORTABILITY

The overwhelming majority of the commenters, like PCIA, agreed with the FCC's tentative conclusion that competitive neutrality must be the hallmark of any number portability plan. These commenters were typified by MCI, which stated that any competitively neutral cost recovery mechanism should not give one provider an appreciable, incremental cost advantage over another, and should not have a disparate effect on the ability of competing carriers to earn normal returns.[6] Adherence to this principle will ensure that the price and quality of the services offered by each provider -- not the nature of the FCC's cost recovery regulations -- will determine the winners and losers in the telecommunications marketplace.

As noted in PCIA's opening comments, the principle of competitive neutrality grants the Commission the authority to exclude certain classes of carriers from the cost recovery mechanisms for number portability. Among these classes of carriers are paging providers and non-covered SMR carriers. Such carriers merit exclusion because in these high volume, low profit businesses, the imposition of a number portability surcharge will in fact have a disparate effect on the ability of competing carriers to earn normal returns. Thus, because

[6] MCI Comments at 2 (citing *Further Notice*, ¶ 210). *See also* Public Utilities Comm'n of Ohio Comments at 5; Sprint Corporation Comments at 5; Teleport Communications Group Comments at 3.

requiring the messaging and non-covered SMR industries to contribute to the implementation of number portability is not competitively neutral, such contributions should not be required.

Other commenters joined PCIA in requesting that certain carriers be exempted from contributing to the number portability fund. For example, ITCs, Inc. argued that recovery of costs should be the responsibility of those that benefit from the implementation of a public policy.[7] Similarly, AirTouch Paging stated that number portability will not enhance a paging company's ability to attract subscribers. Therefore, because paging providers -- unlike wireline carriers and broadband CMRS providers -- do not benefit from number portability, they should not have to contribute to its implementation.[8] Further, because paging is a low profit margin, highly competitive business, any additional costs imposed by the Commission's number portability initiatives would have a disproportionately adverse impact on the ability of this industry to provide low cost communications to the public.[9]

III. THE COMMISSION SHOULD PROMULGATE NATIONWIDE FUNDING AND PRICING MECHANISMS FOR NUMBER PORTABILITY

There was also substantial support for PCIA's suggestion that nationwide funding and pricing mechanisms would be more efficient than a state-by-state approach to these issues. Sprint Corporation noted that the Commission has Section 251(e)(2) authority to adopt

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[7] ITCs Inc. Comments at 1-2. *See also* Scherers Communications Group, Inc. Comments at 3 (stating that only carriers utilizing the database for their numbers should be responsible for payment).

[8] AirTouch Paging, Cal-Autofone, and Radio Electronics Products Corp. Comments at 2-3.

[9] *Id.* at 4-6.

national cost recovery standards,[10] while Scherers Communications Group added that rates for usage should be set on a national basis.[11] Many other parties also agreed with PCIA that pricing principles for state-specific databases should be governed by the Commission's national pricing principles.[12]

The Cellular Telecommunications Industry Association ("CTIA") also supported the implementation of nationwide cost recovery rules for two reasons that are unique to the wireless industry. First, because CMRS service areas are multistate, a state-by-state funding mechanism might subject wireless providers to inconsistent funding obligations. Second, cellular networks utilize IS-41 technology, which connects cellular switches from many states in order to allow roaming, coordinate billing, and prevent fraud. Such centralized data processing would be made more difficult if states promulgated different means of financing, and possibly billing for, number portability.[13]

IV. THE RECOVERY OF CARRIER-SPECIFIC NUMBER PORTABILITY COSTS SHOULD NOT BE "POOLED," BUT RATHER FINANCED BY EACH CARRIER INDIVIDUALLY

Finally -- consistent with its proposal that individual carriers be required to finance the deployment of number portability within their own networks -- PCIA agrees with those commenters who opposed any plan under which the costs of network upgrades would be

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[10] Sprint Corporation Comments at 5.

[11] Scherers Communications Group Comments at 4.

[12] *See* Teleport Communications Group Comments at 6-7; Public Utilities Comm'n of Ohio Comments at 5-6; Illinois Commerce Comm'n Comments at 4.

[13] CTIA Comments at 2-3.

"pooled." Omnipoint, in particular, articulated four reasons why "pooling" is not in the public interest. First, under a "pooling" plan, carriers would no longer be required to make market-based calculations prior to upgrading their networks. Second, certain carriers would find themselves entitled to free network upgrades without being required to share in the profits resulting from these upgrades. Third, carriers that had the foresight to build sophisticated networks prior to the imposition of these number portability requirements would be forced to pay to upgrade other, less foresighted, carrier's networks. Finally, any "pooling" arrangement increases the potential for carriers to abuse the system and raises the costs of reporting, administration, and compliance.[14]

Many other parties joined with PCIA and Omnipoint in opposing the "pooling" concept. For example, the Illinois Commerce Commission noted that national "pooling" or averaging of regional industry costs may reduce incentives to incur costs efficiently and may lead to regional cross-subsidization.[15] Pacific Telesis also remarked that "pooling" of direct carrier-specific costs would require some carriers to subsidize others. Finally, AT&T proposed that carriers pay their own network modification costs directly attributable to long term number portability because such a plan: (1) is a competitively neutral cost recovery scheme; (2) will encourage carriers to make efficient economic decisions; and (3) is fair to

[14] Omnipoint Comments at 5-6.

[15] Illinois Commerce Comm'n Comments at 5.

incumbent local exchange carriers because they have a large customer base over which to spread their implementation costs.[16]

V. CONCLUSION

The record in this proceeding reflects that the Commission should implement a cost recovery mechanism for number portability that is competitively neutral, exempts carriers that do not benefit from number portability, is nationwide, and requires carriers to finance their own carrier-specific costs. Such a cost recovery scheme will be administratively simple and encourage economically efficient decision making by carriers, thereby allowing consumers to reap the benefits of number portability for the least possible cost.

Respectfully submitted,

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[16] AT&T Comments at 12-14. *See also* MCI Comments at 9-10 (each carrier should bear its own carrier specific costs); Sprint Corp. Comments at 8-9 (individual carrier recovery -- rather than pooling -- should be required in order to encourage efficiency).