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IX-B THE MECHANISM (ALTERNATIVE INTERSTATE AND INTRASTATE RECOVERY)

Section 251(e)(2) of the 1996 Act states that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission" (emphasis added). We have, therefore, the duty to "determine" a competitively neutral method of number portability cost allocation. For the reasons discussed above, we conclude that we also have the authority to determine a competitively neutral system of cost recovery. We further conclude that we should exercise that authority to ensure that Congress' goal of national system of number portability, developed and implemented pursuant to federal rules, is fully met.

As we have described in our discussion of costs that are allocable and recoverable, Type I and Type II number portability costs are new costs that are being incurred solely to facilitate the introduction of facilities-based competition in the local exchange. Nothing on the record suggests that the expenditure of Type I or Type II costs will permit those that incur the costs to provide any other new or profitable services. Moreover, we conclude that we have been granted authority via Sections 251(b)(2) and 251(e)(2) to ensure the viability of a competitive network of networks, a seamless telecommunications network that has fully deployed number portability. As we explained in the First Report and Order, this national deployment policy is amply justified under the express terms of the 1996 Act and in the record. All telecommunications carriers have the need to rely upon number portability technology to complete calls and the obligation to pay for it on a "competitively neutral" basis. We should, therefore, implement a uniform cost recovery scheme.

There is significant dispute among the parties on the question of whether the costs of number portability are purely interstate or are separable into interstate and intrastate costs. Although we believe that ample evidence exists to treat number portability costs as purely

interstate, we also believe that the States should assist in implementing cost recovery for the intrastate portion of the costs.

Under our recovery mechanism, telecommunications carriers shall be permitted, but not required, to pass through their Type I and Type II costs to their customers in the form of complementary new service rate elements in both the federal and state jurisdictions. In view of our authority under Sections 251(b)(2) and (e)(2), we believe we have the authority to do so. See CSX Transp. v. Easterwood, 113 S. Ct. 1732, 1737 (1993).

Unlike other services and functionalities that telecommunications carriers may deploy, we have limited carriers' ability to earn on their respective investments in number portability. Essentially, telecommunications carriers will be permitted to recoup their investments for number portability deployment, but no more, through the permitted new rate elements.

A. TYPE I ALLOCATION

We conclude that Type I costs should be allocated to all telecommunications carriers in a NPAC region based upon their end user telecommunications revenues, as we allocated the universal service support for eligible schools, libraries, and rural health care providers.[11] We leave it to the NANC to work out the details of and guidelines for the administration of this recovery mechanism. We suggest, however, that the NANC may decide to implement a mechanism that by the means of which: (1) the regional number portability administrator shall report the total Type I costs for each NPAC region; (2) the total regional Type I costs shall be divided by the total interstate and intrastate telecommunications revenues of all carriers in each region to arrive at an assessment per dollar of telecommunications revenue (the "Assessment Factor"); (3) all telecommunications carriers shall be assessed in arrears an amount equal to their total regional intrastate and interstate telecommunications revenues multiplied by the Assessment Factor; (4) if a carrier's assessment is more than the amount of Type I costs it

[11] Universal Service Order at ¶ 843.

has paid, the carrier shall remit the overage to the Administrator; and (5) if a carrier's assessment is less than the amount of Type I costs it has paid, the Administrator shall pay the carrier the shortfall. This example is illustrative only, and we expect that the NANC will make the processes as administratively streamlined as possible.

B. TYPE II ALLOCATION

We conclude that Type II costs should be borne by the telecommunications carrier that incurs them. However, in order to make this allocation competitively neutral, we authorize telecommunications carriers that incur Type II number portability costs to recover them pursuant to the mechanisms set forth below. Because all users will benefit from the competition enhanced by the implementation of number portability, carriers shall be permitted, though not required, to pass through their costs to all of their customers of their interstate and intrastate services in an equitable and nondiscriminatory fashion.

C. TYPE I AND II RECOVERY

We authorize a bifurcated structure of charges to recover Type I and Type II costs. The first category of charges that is authorized is a new service rate element that recovers number portability costs from all of a carrier's customers. These new rate elements will recover all number portability costs over a time period of not less than five years. This category of charges applies not only to retail customers of a carrier, but also to carriers that purchase, for instance, services for resale, unbundled network elements, and line-side access services. The second category of charges that is authorized may consist of per-query charges to N-1 carriers who elect to access another carrier's LNP database on a prearranged or default basis to complete their calls. In addition, this category of charges may include appropriate non-recurring charges.

While we conclude that we have authority under Section 251(e) to treat all number portability costs through a federal mechanism, we have decided that number portability costs will be subjected to the

Part 36 separations process. We authorize, but do not require, telecommunications carriers to recover these separated costs by means of new service rate elements.

We conclude that carriers shall be permitted, though not required, to recover the interstate portion of Type I and Type II costs may be recovered by means of the establishment of interstate new service rate elements under Part 69 of our rules. These new rate elements shall consist of both per query charges and charges to all of a carrier's customers. We find on the record before us, subject to appropriate rate levels based upon cost support, that the interstate new service rate elements meet the strictures of Section 69.4(g) of our rules and are in the public interest.

We also conclude that the States are required to allocate Type I number portability costs among all telecommunications carriers in a State based upon end user telecommunications revenues as set forth herein. We also conclude that States are required to permit telecommunications carriers to recover intrastate Type I and Type II costs. We conclude that in order to provide competitive neutrality, that portion of carriers' Type I and Type II costs assigned to the States shall be recovered through newly established rate elements that follow our pattern set forth above for the interstate jurisdiction. We require States to complete the proceedings necessary to establish number portability cost recovery mechanisms by no later than January 1, 1998.