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OFFICE OF THE SECRETARY



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November 3, 1997

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, D.C. 20554

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

Dear Mr. Caton:

This letter responds to BellSouth's October 1, 1997 memorandum,¹ which addresses AT&T's September 11th letter concerning the implications of the Eighth Circuit's recent decision in Iowa Utilities Board v. FCC² on the Commission's pending decision to establish cost recovery rules for permanent local number portability ("LNP"). AT&T's letter rebutted BellSouth's attempts to argue that Iowa limited, in some unspecified fashion, the Commission's authority under § 251(e)(2) to determine how LNP-related costs will be allocated among carriers. In addition, AT&T's letter answered BellSouth's claims that § 251(e)(2) requires that Type II LNP costs be pooled and spread across all telecommunications carriers.

BellSouth's strident response requires only a brief reply. First, BellSouth complains that AT&T mischaracterized BellSouth's earlier letter by stating that it relied only on a single snippet from Iowa Utilities Board. BellSouth argues that, to the contrary, it relied not only on the two sentences AT&T quoted, but also on a third sentence, which immediately followed those quoted by AT&T. In fact, the sentence AT&T omitted adds nothing to BellSouth's argument, and does not alter AT&T's description (or rebuttal) of its claims.

¹ See "BellSouth Response to AT&T September 11, 1997 Letter," an attachment to Letter from Cynthia Cox, Executive Director, Federal and State Relations, BellSouth, to William F. Caton, Acting Secretary, Federal Communications Commission, October 1, 1997 ("BellSouth Response").

² 1997 WL 403401 (8th Cir., July 18, 1997).

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The passage on which BellSouth seeks to rely reads, in full:

Additionally, certain nonpricing provisions of the Telecommunications Act provide the FCC with much more direct and unambiguous grants of intrastate authority than the FCC's strained reading of subsections 251(d) and 251(c). For instance, subsection 251(b)(2) burdens LECs with "[t]he duty to provide ... number portability in accordance with requirements prescribed by the Commission." 47 U.S.C.A. s 251(b)(2) (West Supp.1997). In contrast, no provision of the Act unambiguously requires rates for the local competition provisions to comply with FCC-prescribed requirements, no provision unambiguously directs the FCC to issue such pricing regulations, and there is no straightforward and unambiguous modification of section 2(b) in the Act.³

AT&T will not repeat the arguments it made in its September 11th letter. But the final sentence quoted above (upon which BellSouth relies in its October 1st memo) simply states that the "local competition provisions" which the court was construing -- namely "subsections 251(d) and 251(c)" -- do not confer pricing authority on the Commission. The court at no point, either in the passage above or elsewhere in its opinion, suggests that the unambiguous language of § 251(e)(2) does not grant the Commission authority to regulate cost recovery for local number portability.

In fact, as AT&T stated in its earlier letter, Iowa Utilities Board twice affirms the Commission's jurisdiction under § 251(e),⁴ and the Eight Circuit's subsequent decision in California v. FCC reiterates that conclusion.⁵ BellSouth's response is simply to cavil that these decisions cite § 251(e) (which itself contains nothing save a caption), rather than either of that section's two subparts. Even putting aside the fact that the court's reference to § 251(e) logically includes its component subsections, BellSouth simply refuses to acknowledge the plain language of § 251(e)(2). That section unequivocally provides that "The 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." Subsection 251(e)(1) likewise includes an express grant of jurisdiction to the FCC.

Finally, BellSouth responds to AT&T's rebuttal of its claim that § 251(e)(2) requires all Type II costs be pooled and spread across all carriers by arguing that the Commission has already found that such costs are related to number portability and that § 251(e)(2) therefore requires that they be pooled.⁶ In fact, the very paragraph of the

³ Iowa Utilities Board, at *6 (emphasis added).

⁴ See id. at *4, n.10 & *12, n.23.

⁵ See California v. FCC, 1997 WL 476529 (8th Cir. August 22, 1997), at *1.

⁶ See BellSouth Response, pp. 3-4.

Number Portability Order that BellSouth cites concludes that the Commission has authority under that section to "require individual carriers to bear their own costs of deploying number portability in their networks."⁷ Otherwise, BellSouth does not address the merits of AT&T's arguments that the number pooling scheme it proposes would encourage carriers to misallocate as "number portability costs" expenses not properly attributable to that service, or to engage in "gold plating" by over-engineering network upgrades, and would reward carriers that have not yet modernized their networks. Even more importantly, BellSouth fails even to acknowledge that four other BOCs have also opposed pooling Type II costs,⁸ as AT&T stated in its September 11th letter. In sum, there is simply no basis for BellSouth's claim that § 251(e)(2) requires the cost pooling scheme it advocates.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(2) of the Commission's Rules.

Sincerely,



cc: A. Richard Metzger
J. Schlichting
P. Donovan
N. Fried

⁷ First Memorandum Opinion and Order on Reconsideration, Telephone Number Portability, CC Docket No. 95-116, FCC 97-74, released March 11, 1997, ¶ 221.

⁸ See Attachment to Letter from Frank Simone, Regulatory Division Manager, Federal Government Affairs, AT&T, to William F. Caton, Acting Secretary, Federal Communications Commission, May 15, 1997, pp. 5-6 (citing comments and *ex parte* statements by PacTel, Ameritech, U S West, and SBC).