

WILLKIE FARR & GALLAGHER

Washington, DC
New York
London
Paris

RECEIVED

FEB 13 1998

**Federal Communications Commission
Office of Secretary**

February 13, 1998

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

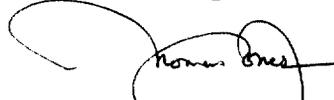
Re: Ex Parte Presentation in CC Docket No. 95-
116, RM 8535, Telephone Number Portability

Dear Secretary Salas:

On Thursday, February 12, 1998, representatives of Time Warner Communications Holdings Inc. ("TWComm") met with Kevin Martin, Legal Advisor to Commissioner Harold Furchtgott-Roth. Representing TWComm were Don Shephard, and Thomas Jones. Attached is a copy of the outline distributed at the meeting and which describes the substance of TWComm's presentation.

Two copies of this letter as well as the attached outline will be filed in the above-referenced docket. Please let me know if you have any questions.

Sincerely,


Thomas Jones

cc: Kevin Martin

No. of Copies rec'd 042
List ABCDE

**LOCAL NUMBER PORTABILITY
COST RECOVERY
CC Docket No. 95-116**

Don Shephard
Time Warner Communication
February 12, 1998

Federal Communications Commission
Office of Secretary

FEB 13 1998

RECEIVED

LOCAL NUMBER PORTABILITY COST RECOVERY TIME WARNER COMMUNICATIONS

- ***All Telecommunications Carriers Should Pay for Local Number Portability***
 - **This is a statutory requirement under Section 251(e)(2)**
 - **It is also sound policy. Since virtually all consumers of telecommunications services benefit from LNP, all such consumers should support the upgrade.**
 - **All local exchange customers benefit from LNP. Even those that never switch carriers will benefit from better service and lower prices caused by the competition that LNP makes possible.**
 - **Long distance customers will benefit from lower access charges that will result from the competition made possible by LNP.**

LOCAL NUMBER PORTABILITY COST RECOVERY TIME WARNER COMMUNICATIONS

- ***The FCC Has Considerable Discretion in Setting Rules for LNP Cost Recovery Among All Telecommunications Carriers***
 - **Agencies have discretion where acting pursuant to an explicit delegation of authority (“as determined by the Commission”) to implement an ambiguous standard such as “competitively neutral.”**
 - **Many ILECs have incorrectly suggested that the “competitively neutral” standard requires that each carrier pay the same amount to support LNP.**
 - **The FCC has already established a definition of competitively neutral that permits more flexibility:**
 - **One service provider should not be given an appreciable, incremental cost advantage over another service provider.**
 - **Should not have a disparate effect on the ability of competing service providers to earn normal returns on their investments.**

LOCAL NUMBER PORTABILITY COST RECOVERY TIME WARNER COMMUNICATIONS

- ***All Carriers Should Pay Category 1 Costs Based on Their Obligation to Support School, Library, and Rural Health Care Subsidies.***
 - **The FCC has already determined that this is a competitively neutral cost recovery mechanism in the universal service order.**
 - **Given that LNP is essential for local competition, it makes sense to base contribution obligations on intrastate, as well as interstate revenues.**
 - **Contribution mechanism in place at national level and could readily be adapted to regional level.**
 - **The FCC should not adopt transaction-based charges:**
 - **Most SMS transactions are not discretionary, so requiring payments on a per-SMS transaction basis will not improve efficiency.**
 - **Disproportionately affects new entrants.**

LOCAL NUMBER PORTABILITY COST RECOVERY TIME WARNER COMMUNICATIONS

- ***Carriers Should Be Required to Bear Their Own Category 2 Costs***
 - **All competitors in the local market (as well as IXC's) will be required to incur costs for LNP upgrades.**
 - **TWComm has significant LNP upgrade costs, and has fewer customers from whom to recover them than do the ILECs.**
 - **Does not provide an appreciable competitive advantage**
 - **Does not impede ability to earn normal returns**

LOCAL NUMBER PORTABILITY COST RECOVERY TIME WARNER COMMUNICATIONS

- ***The FCC Should Not Adopt Pooling for Category 2 Costs***
 - **Creates incentives for including non-category 2 costs and for each carrier to maximize its return from the pool;**
 - **Reduces incentive to make upgrades in most efficient manner;**
 - **Penalizes more efficient carriers by requiring them to pay for less efficient carriers' upgrades;**
 - **Wastes scarce administrative resources by increasing need for regulatory oversight of all LECs reporting costs;**
 - **Likely to increase already high cost of local market entry;**
 - **PacTel, Amertech, and US West all agree that this is an inefficient approach (See 8/16 Comments).**

LOCAL NUMBER PORTABILITY COST RECOVERY TIME WARNER COMMUNICATIONS

- **LNP Costs Should be Amortized over a 3-5 Year Period.**
- **Two Options for Jurisdictional Treatment:**
 - **All costs allocated to the interstate jurisdiction**
 - **Recovery via interstate surcharge on end-user lines**
 - **Separations allocation to both jurisdictions**
 - **Interstate recovery via end-user surcharge**
 - **Considerable latitude required for State recovery:**
 - **End-User Surcharge**
 - **Service Prices**
 - **Infrastructure Commitments**
- **Surcharges should be non-mandatory, but uniformly applied across all end-user lines.**