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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

PETITION FOR CLARIFICATION
OF COMCAST CELLULAR COMMUNICATIONS, INC.

Comcast Cellular Communications, Inc. ("Comcast"), by its attorneys, hereby submits this petition for clarification of the Commission's *Third Report and Order* in the above-referenced matter.[1] For the reasons described below, the Commission should clarify that incumbent local exchange carriers ("ILECs") are not permitted to recover their carrier-specific costs directly related to providing number portability through charges assessed to interconnecting carriers. Specifically, the Commission should clarify that ILECs are prohibited from recovering their carrier-specific number portability costs through any form of interconnection charges or add-ons to interconnection charges.

I. INTRODUCTION AND BACKGROUND

In its *Third Report and Order*, the Commission adopted rules governing the recovery of costs associated with the implementation of long-term telephone number portability in accordance with Section 251(e) of the Communications Act of 1934, as amended (the "Act"). Section 251(e) requires that the cost recovery for number portability be borne by all

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[1] *See* Telephone Number Portability, *Third Report and Order*, CC Docket No. 95-116, released May 12, 1998, 63 Fed. Reg. 35150 (1998) (to be codified at 47 C.F.R. §§ 52.32-52.33).

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telecommunications carriers on a competitively neutral basis as determined by the Commission.[2] The Commission defined competitive neutrality in this context as "as requiring that 'the cost of number portability borne by each carrier does not affect significantly any carrier's ability to compete with other carriers for customers in the marketplace.'"[3] In addition, the Commission adopted a two-part test for determining whether cost recovery is indeed neutral:

> Under this test, the way carriers bear the costs of number portability: (1) must not give one service provider an appreciable, incremental cost advantage over another service provider when competing for a specific subscriber, and (2) must not disparately affect the ability of competing service providers to earn a normal return.[4]

The Commission also concluded that ILECs, like all other carriers, must bear their own specific costs directly related to providing number portability.[5] The Commission will allow ILECs subject to rate-of-return or price-cap regulation to recover their carrier-specific costs of number portability through an interstate charge assessed on ILEC end-users.[6] As the Commission explained,

> [t]he Commission has only two sources from which it may allow carriers to recover costs in the federal jurisdiction: charges IXCs pay LECs for exchange access and end-user charges. Because number portability is not an access-related service and IXCs will incur their own costs for the querying of long-

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[2] 47 U.S.C. § 251(e).

[3] *Id.* ¶ 52.

[4] *Id.* ¶ 53.

[5] *Id.* ¶ 136.

[6] *Id.* ¶¶ 9, 135.

> distance calls, we will not allow LECs to recover long-term number portability costs in interstate access charges.[7]

As a result, the Commission permitted ILECs to recover such costs from their customers.

II. THE COMMISSION SHOULD CLARIFY THAT ILECs ARE PROHIBITED FROM RECOVERING CARRIER-SPECIFIC COSTS FROM INTERCONNECTING CARRIERS

The Commission should clarify that ILECs are prohibited from recovering their number portability costs through interconnection charges to their carrier "customers" because such an intercarrier recovery mechanism would not be competitively neutral as required by the Act and would be contrary to the Commission's decision that all carriers are to bear their individual costs. Moreover, the Act's provisions governing carrier-to-carrier interconnection charges for the reciprocal transport and termination of local traffic permit ILECs only to charge interconnecting carriers only for their additional, incremental costs of reciprocally transporting and terminating traffic. These sections of the Act involving ILEC interconnection obligations do not reference number portability and thus, number portability charges may not be assessed upon interconnecting carriers simply because they interconnect. Lastly, the Commission should clarify that an ILEC may not recover its carrier-specific number portability costs through charges to carriers that receive no number portability functionality in return.

Inherent in the Telecommunications Act of 1996 ("1996 Act") is the concept that carriers and end-users are different entities with distinct legal rights and obligations. Consistent with this structure, the Commission has recognized this distinction in determining that carriers have an

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[7] *Id.* ¶ 135.

entirely different status than end-users under the Act.[8] Accordingly, the Commission should confirm that its *Third Report and Order*, consistent with prior Commission precedent, rejects the concept of any intercarrier recovery mechanism in favor of an end-user charge for carrier-specific costs of number portability.

A. ILEC Cost-Recovery Through Interconnection Charges Would Be Unlawful

A recovery mechanism that permits recovery of carrier-specific number portability costs through interconnection charges would be unlawful because it would not be competitively neutral in accordance with Section 251(e). Section 251(e) requires that cost recovery for number portability be competitively neutral.[9] Permitting ILECs to recover any of their costs through interconnecting carriers would give ILECs an appreciable cost advantage over all other carriers when competing for specific subscribers. Instead of taking responsibility for these costs, the ILEC would merely pass its costs to interconnecting carriers, thereby creating for the ILEC an artificial pricing advantage.

Further, allowing ILECs to recover their costs through interconnecting carriers would be contrary to the Commission's rules requiring that ILECs bear their own individual carrier-

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[8] *See, e.g.*, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499, 15988-15992 (1996) (defining "telecommunications carrier" for purposes of determining interconnection rights and obligations). In fact, the Commission has maintained different rules for carrier charges and end user charges even prior to the 1996 Act. Enhanced TeleManagement, Inc. v. Northwestern Bell Telephone, *Memorandum Opinion and Order*, 8 FCC Rcd 4188, 4189 (1993).

[9] *See* 47 U.S.C. § 251(e). Under the Commission's two-part test for determining whether the definition of competitive neutrality is met, the way carriers recover the costs of number portability must not give a service provider an appreciable cost advantage over another service provider when competing for a specific subscriber and must not disparately affect the ability of competing service providers to earn a normal return. *Id.*

specific costs directly related to number portability. In its *Third Report and Order*, the Commission concluded that ILECs are to *bear their own costs*.[10] If an ILEC is allowed to recover its costs through interconnection charges assessed on other carriers, that ILEC would not be bearing its own costs but, rather, passing them to other carriers.

Moreover, the recovery of number portability costs through interconnection charges is precluded by Section 252(d) of the Act. Section 252(d) governs charges for the reciprocal transport and termination of local traffic.[11] Section 252(d) contains no reference to number portability costs. Indeed, cost recovery for number portability is addressed in an entirely different provision of the Act, Section 251(e). Because Section 252(d) dictates what may be charged for reciprocal transport and termination of local traffic, and does not reference number portability, it would be unlawful for ILECs to recover their number portability costs through charges to interconnecting carriers.[12]

B. ILECs May Not Assess A Carrier Charge When There Is No Portability Functionality

The only exception the Commission has recognized to the prohibition on carrier cost recovery is a narrow one. In its *Third Report and Order*, the Commission determined to allow ILECs to recover their carrier-specific number portability costs through monthly charges to resellers and purchasers of switching ports as unbundled network elements on the assumption

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[10] Id. ¶¶ 136-37.

[11] 47 U.S.C. § 252(d).

[12] In fact, the Commission's cost recovery rules properly reflect the reciprocal nature of interconnection for the exchange of local traffic, by requiring each carrier to bear its own costs, thereby precluding that they be passed onto competitors or potential competitors.

that resellers and purchasers of ILEC unbundled switch ports would receive number portability functionality through these services or network element purchase arrangements.[13] By implication then, an ILEC may not seek to recover carrier-specific costs through interconnection charges to other carriers where no such portability functionality is provided. A carrier receiving no portability functionality would still be responsible for provisioning such functionality for itself, and thus, incur the corresponding cost.

Other discussions in the *Third Report and Order* confirm that an ILEC may not assess a number portability charge where no number portability functionality is provided. Indeed, the Commission specifically prohibited ILECs from assessing a monthly number portability charges on carriers that purchase local loops as unbundled network elements because "the unbundled loop does not contain the number portability functionality."[14] Any clarification of cost recovery rules should confirm that no charges apply when carriers receive no number portability functionality from an ILEC.

III. CONCLUSION

For the foregoing reasons, the Commission should clarify that ILECs cannot recover their carrier-specific costs directly related to providing number portability through charges assessed on interconnecting local carriers, particularly when the carrier receives no portability functionality from the ILEC. Comcast's experience suggests that clarification now of the

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[13] *Id.* ¶ 146.

[14] *Id.*

Commission's intentions regarding the ILEC cost-recovery scheme for number portability will avoid future disputes as to the Commission's intent.

Respectfully submitted,

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