

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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JUL 29 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

**PETITION FOR CLARIFICATION  
AND/OR RECONSIDERATION OF  
THE UNITED STATES TELEPHONE ASSOCIATION**

The United States Telephone Association (USTA) hereby seeks clarification or reconsideration of certain aspects of the Commission's *Third Report and Order* in the above-captioned proceeding.<sup>1</sup> As the principle trade association of the local exchange carrier (LEC) industry, USTA comprises approximately 1,200 carriers that are directly affected by the Commission's actions in this docket. USTA has been an active participant in all phases of implementing telephone number portability.

**I. INTRODUCTION**

In the *Third Report and Order*, the Commission adopted rules that prescribe how incumbent local exchange carriers (ILECs) and other telecommunications carriers are to recover the costs of providing long-term number portability. Several aspects of those rules

<sup>1</sup> *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, RM 8535, *Third Report and Order*, FCC 98-82 (rel. May 12, 1998) (*Third Report and Order*). Notice of the *Third Report and Order* appeared in the *Federal Register* on June 29, 1998.

No. of Copies rec'd 028  
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raise significant questions about the ability of ILECs, particularly small and mid-size companies, to adequately recover the costs they must incur in the provision of number portability. Those items require clarification and, depending on the Commission's determination, possibly reconsideration.

The first specific issue that needs to be clarified involves the requirement for ILECs in the top 100 MSAs to recover their carrier-specific costs from end users during a five-year period beginning no earlier than February 1, 1999. USTA seeks clarification that, if an ILEC does not actually port numbers until some time after February, 1999, the carrier would have a full five years to recover those costs. The second issue addresses the inequities of requiring ILECs to levelize their carrier-specific costs for the full five year period at the beginning of that period. The third issue involves the ability of ILECs who will not be required to port numbers immediately to recover costs they incur for routing and terminating ported calls. The fourth issue concerns the lack of a mechanism for ILECs outside the top 100 MSAs to recover from the end-user their payment to the regional local number portability administrator. Although this issue was a subject of a USTA petition for reconsideration in this proceeding that was filed on October 17, 1997, an adequate cost recovery mechanism was not adopted in the *Third Report and Order*. Finally, the *Third Report and Order* does not address the specific procedure for ILECs to open NXX codes for portability. The particular concern is that if an eligible NXX code is opened for portability, then an ILEC will immediately incur a query expense every time a number from that NXX code is called, which should be recoverable.

**II. ILECs IN THE TOP 100 MSAs SHOULD BE GIVEN FIVE YEARS FROM THE DATE THEY DEPLOY NUMBER PORTABILITY CAPABILITY TO RECOVER IMPLEMENTATION COSTS.**

Newly adopted section 52.33(a) of the Commission's rules provides for carrier-specific cost recovery through a monthly charge that may take effect no earlier than February 1, 1999 and end no later than five years after that date. The *Third Report and Order* addresses this provision.<sup>2</sup>

USTA is concerned about the applicability of this provision to those small and mid-size ILECs serving territories in a top 100 MSA who begin to deploy number portability sometime after February 1, 1999. The rule is not clear as to whether such an ILEC may recover its costs from end users for a full five years from the time it incurs number portability costs or whether it must recover all its costs within five years from February 1, 1999. ILECs should have a full five years to recover carrier-specific number portability costs from end users, regardless of when they initially incur those costs. USTA urges that Section 52.33(a)(1) be clarified to specifically provide for a full five year cost recovery period.

**III. ILECs IN THE TOP 100 MSAs MUST BE ABLE TO ADJUST THEIR MONTHLY NUMBER PORTABILITY CHARGE TO FULLY RECOVER COSTS DURING THE FIVE YEAR PERIOD.**

New Section 52.33(a)(1)(D) of the rules requires ILECs in the top 100 MSAs to set their carrier-specific costs at the beginning of the five year recovery period. This means

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<sup>2</sup>*Id.* at paragraph 142.

that a carrier must levelize its costs at the outset on the basis of the present value of the cost being recovered and is unable to raise that charge during the entire period without making an extensive showing of unreasonableness.<sup>3</sup>

USTA believes that the implementation of this provision will result in difficulty for ILECs because of the great uncertainties in determining number portability costs. Demand for number portability can change. Customers can be lost. Number portability may not emerge in the marketplace according to current expectations. All these factors make it unlikely that an ILEC's estimate of costs at the beginning of the five year recovery period will be the same as its actual costs throughout that period. For these reasons, USTA urges the Commission to reconsider the requirement of a levelized charge in Section 53.22(a)(1)(D) and allow ILECs to adjust their end-user charges to adequately reflect current number portability costs.

**IV. ILECs WITHOUT NUMBER PORTABILITY CAPABILITY MUST BE ALLOWED TO RECOVER ALL CARRIER-SPECIFIC COSTS THEY INCUR, INCLUDING ROUTING AND REGIONAL NPAC COSTS.**

ILECs are permitted to recover carrier-specific query-service charges, pursuant to Section 52.33(a)(2) of the rules. Those charges are to be recovered from N-1 carriers separately from end-user charges.

Once a number within a particular NXX is ported, the N-1 carrier has to initiate a query to the number portability database for every call placed to that NXX in order to

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<sup>3</sup> *Id.* at paragraphs 143-144.

determine the correct routing destination. When a local call originates from an end-user customer of an ILEC, that ILEC is the N-1 carrier that queries the database. However, for interexchange calls, many small and mid-size ILECs have joint calling agreements with larger ILECs to do database functions.<sup>4</sup> The N-1 carrier assesses a charge for performing its services. This means that many small and mid-size ILECs are not themselves providing number portability, but are incurring costs in order to properly route calls terminating on number portability capable switches. Such costs often are substantial to these small and mid-size carriers.

The *Third Report and Order* does not specify how ILECs can recover these costs. Rather, it specifies that ILECs may recover their carrier-specific number portability costs only through end-user charges that are tariffed and that apply only to customers served from number portability capable switches.<sup>5</sup> USTA is concerned that ILECs not having number portability capability are totally precluded from recovering number portability costs that they have no choice but to incur.

USTA advocates that the Commission permit ILECs without number portability capability to recover carrier-specific number portability costs in the same manner as other network costs are recovered. This would mean that those ILECs would continue to book and recover number portability costs through regular accounting and separations

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<sup>4</sup> For some interexchange calls, small and mid-size ILECs have direct trunking arrangements with larger ILECs such as Extended Area Service (“EAS”). For EAS traffic, small and mid-size carriers are often the N-1 carrier and therefore are responsible for performing the database query.

<sup>5</sup> *Id.* at paragraphs 142-143.

processes. This procedure could remain in place until the Commission further considers the issue.

**V. AN ADEQUATE COST RECOVERY MECHANISM SHOULD BE ADOPTED FOR ILEC CONTRIBUTIONS TO THE REGIONAL LOCAL NUMBER PORTABILITY ADMINISTRATOR.**

On October 17, 1997, USTA filed a joint petition with OPASTCO in the above-captioned proceeding seeking reconsideration of several aspects of the *Second Report and Order*<sup>6</sup> relating to the regional local number portability administrators that are provided by regional Local Liability Companies (LLCs). Of primary concern to USTA was that the Commission had not adopted a cost recovery mechanism for the significant capital contributions and assessments that the LECs would have to pay in order to participate in the LLC process. These contributions would be made by ILECs throughout the country, not only those in the top 100 MSAs. As stated in the petition,<sup>7</sup> capital contributions of \$10,000 to \$20,000 as part of ongoing contributions or assessments are significant to small and mid-size ILECs.

The *Third Report and Order* did not address this issue. Indeed, the limited cost recovery measures adopted apply only to those ILECs providing number portability in the top 100 MSAs and even then do not provide for recovery of all the costs related to number

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<sup>6</sup> *In the Matter of Telephone Number Portability*, CC Docket No. 95-116, RM 8535, *Second Report and Order*, 12 FCC Rcd 12281 (1997) (*Second Report and Order*).

<sup>7</sup> *Petition for Reconsideration of the Organization for the Protection and Advancement of Small Telephone Companies and the United States Telephone Association*, p.4.

portability. USTA strongly urges the Commission to provide for a mechanism that allows all ILECs participating in the regional LLCs to recover their costs. A recovery mechanism for these significant costs should not be restricted to those ILECs located in the top 100 MSAs with number portability capable switches. The proportional cost for participation in the regional LLCs for those companies excluded from present cost recovery rules is substantial in many cases and cannot be overlooked.

**VI. SPECIFIC PROCEDURES REGARDING OPENING OF NXX CODES FOR PORTABILITY SHOULD BE ADDRESSED.**

The procedures followed by carriers in opening NXX codes for portability can vary. Many service providers key on the Bellcore Local Exchange Routing Guide (“LERG”) effective date to commence ported routing for codes in their networks. It is assumed that they intend to begin charging for queries on the LERG effective date, sometimes well in advance of any competitive marketing or initial service port. Other providers key on the regional NPAC database, first service port notification, in opening codes for portability on their networks. Regardless of which procedure is followed, there are significant cost implications for the ILECs who must perform the query functions.

The Commission must assure that adequate cost recovery mechanisms for querying functions are available to all ILECs. Specifically, cost recovery measures should provide that the ILECs incur no financial impact prior to implementation of true number portability by that ILEC and that ILECs with non-number portability capable switches recover query costs when legitimate queries are required. The Commission should also clarify that an

ILEC will not be required to perform query functions unnecessarily and prematurely.

**VII. CONCLUSION**

USTA urges the Commission to clarify those portions of the *Third Report and Order* to allow full recovery of carrier-specific costs for ILECs in the top 100 MSAs to implement number portability. Furthermore, USTA seeks reconsideration of the *Third Report and Order* to permit full recovery of those costs incurred by all ILECs in routing and terminating ported calls, in participating in the regional local number portability administrators, and in query expenses.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

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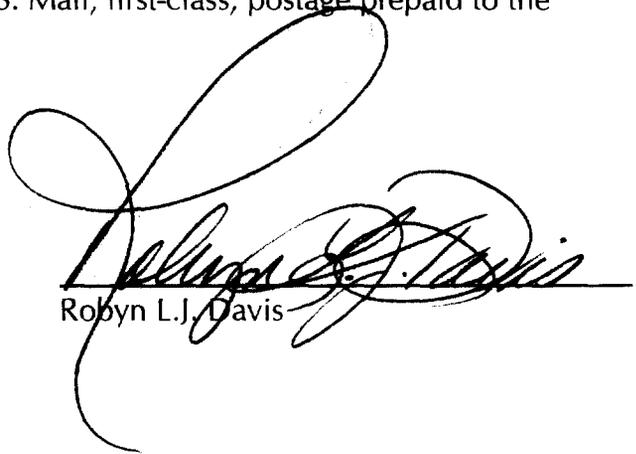
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**CERTIFICATE OF SERVICE**

I, Robyn L.J. Davis, do certify that on July 29, 1998 copies of the Petition for Clarification and/or Reconsideration of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.



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