

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

In the Matter of)

Telephone Number Portability)

CC Docket No. 95-116

RM 8535

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PETITION FOR CLARIFICATION OF
THE PERSONAL
COMMUNICATIONS INDUSTRY ASSOCIATION

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Personal Communications Industry Association ("PCIA"),¹ by its attorneys, hereby respectfully submits its Petition for Clarification of the Commission's Third Report and Order in the above-captioned proceeding.² As described below, in order to better control the costs of the regional database administrators, the Commission should specifically describe which categories of costs these administrators are permitted to recover from carriers, and require the administrators to put their budgets out for public comment on an annual basis. Further, the

¹ PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Messaging Alliance, the Broadband PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, and the Mobile Wireless Communications Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

² *Telephone Number Portability* (Third Report and Order), CC Docket No. 95-116, FCC 98-82 (May 12, 1998) ("Order"). The Order was published in the Federal Register on June 29, 1998. 63 Fed. Reg. 35150 (1998).

Commission should clarify that, for the purposes of number portability, paging providers are co-carriers and not end users.

I. INTRODUCTION

In the instant *Order*, the Commission set forth cost recovery and cost allocation principles for the provision of long-term telephone number portability. In pertinent part, the Commission's rules permit wireless carriers to recover the costs they incur that are directly related to the provision of number portability "in any lawful manner consistent with their obligations under the Communications Act."³ The Commission further determined that payments made to the entities that administer the regional number portability databases were directly related to the provision of number portability, and therefore recoverable by wireless carriers in the aforementioned manner.⁴

PCIA agrees with the Commission's determination that wireless carriers should be permitted to recover the payments they remit to their regional number portability administrator. Nevertheless, PCIA would like the FCC to clarify precisely which costs the administrators are permitted to recover from telecommunications carriers, and implement a procedural mechanism whereby affected entities can review and comment on each administrator's annual budget. Such Commission action will help to ensure that the costs incurred by the regional number portability administrators are reasonable, thus containing the overall cost of telecommunications services. Finally, the Commission should re-affirm its decision to treat paging providers as co-carriers.

³ *Order*, ¶ 136.

⁴ *Id.*, ¶ 69.

II. THE COMMISSION SHOULD CLARIFY WHICH OF THE REGIONAL NUMBER PORTABILITY ADMINISTRATORS' COSTS ARE RECOVERABLE AND ENSURE THAT AFFECTED ENTITIES ARE PERMITTED TO COMMENT ON THESE COSTS

As wireless carriers, PCIA's members are concerned that, without adequate oversight, the regional database administrators might be insufficiently attentive to controlling their administrative costs. Such cost overruns are of particular concern because the regional database administrators, by their nature, operate as monopolies without the discipline of the market. Therefore, a certain degree of oversight from the Commission and the affected carriers should be instituted. This review will help to constrain cost increases that will affect pricing and operational efficiencies, thereby compromising the Commission's goal of increased competition.

In particular, in order to protect telecommunications carriers and ultimately their customers from excessive number portability administration costs, the Commission should state with some particularity which of the database administrators' costs are recoverable and which are not, and allow the carriers that pay these costs to comment on their validity. Such Commission oversight is essential in order to ensure that the regional number portability administrators operate efficiently, and that the costs of implementing number portability do not drive up the price of telecommunications services any more than is absolutely necessary.

First, regarding clarification of which costs are recoverable by the administrators, the Commission has already stated that recoverable costs include "the database administrators' nonrecurring, recurring, upload, and download costs"⁵ This brief list of recoverable costs is,

⁵ *Id.*, ¶ 87. The Commission further stated that recurring costs include "periodic costs such as rent, utilities, payroll, repair, and replacement that the database administrators will incur to facilitate their provision of database services" *Id.*, ¶ 70.

however, insufficiently precise. In particular, the Commission must specify: (1) whether the costs that the limited liability corporations (“LLCs”), as opposed to the regional database administrators, have incurred regarding the LLCs’ establishment (*e.g.*, legal fees associated with incorporation) are recoverable; (2) whether the database administrators will be permitted to recover the actual cost of all the goods and services they purchase, or whether their cost recovery will be limited to objectively reasonable amounts; and (3) whether any limitations will be placed on the types of goods and services the regional database administrators may purchase.

Second, and consistent with the aforementioned concerns, the Commission should provide for the financial oversight of the regional database administrators by placing their annual budgets out for public comment. Such action is consistent with the Commission’s proposal to “audit the costs of the regional database administrators,” if necessary,⁶ but will allow affected entities, in addition to the Commission, to review the expenditures in question. This review is essential in order to ensure efficient operations because, as noted above, without competition there is little incentive for any business—including a regional database administrator—to control its expenses.

Further, because not every required contributor is a member of the limited liability corporations that oversee the regional database administrators, the non-LLC members that contribute to funding the database administrators should be allowed to comment on the expenditures of these administrators. Specifically, while the Commission has required “all telecommunications carriers” to contribute to funding the regional databases,⁷ membership in the

⁶ *Id.*, ¶ 121.

⁷ *Id.*, ¶ 113.

LLCs is largely limited to local exchange carriers, and is not open to CMRS providers until "such time as they intend to or are porting numbers."⁸ Because wireless carriers are not required to port numbers until June 30, 1999, at the earliest,⁹ these entities are required to fund the regional databases, but will have no role in their oversight.

Requiring the local number portability administrators to submit their budgets to the FCC on an annual basis, and then having the Commission put these budgets out for comment, will give all contributors a voice in the supervision of these administrators. Providing for such cooperative review will not only lead to more efficient operations, but it will be fairer to all contributing entities. In addition, if the Commission utilizes an expedited comment schedule, this notice and comment procedure need not delay the administration of number portability. Therefore, the Commission should implement this final check on the expenditures of the regional number portability administrators.

III. THE COMMISSION SHOULD RE-AFFIRM THAT PAGING PROVIDERS ARE CO-CARRIERS, AND ARE ENTITLED TO BE TREATED AS SUCH

In order to ensure that paging providers are treated fairly, the Commission should re-affirm that, for the purposes of number portability, paging providers are co-carriers and not end users. In particular, in the *Order*, the Commission distinguishes between the charges that LECs

⁸ North American Numbering Council, Local Number Portability Administration Selection Working Group, § 4.4.3 (April 25, 1997) ("*NANC Recommendation*").

⁹ *Order*, ¶ 18. Paging carriers are not required to implement number portability. In addition, the Commission is currently considering requests that it: (1) forbear from imposing number portability obligations on broadband CMRS providers at least until PCS providers complete their five year buildout schedule; and (2) extend the June 30, 1999 compliance deadline for broadband wireless service provider number portability by nine months, until March 31,

(Continued...)

may levy on end users for number portability services, and the charges that LECs may levy on other carriers for such services.¹⁰ While paging providers are not required to port their customers' telephone numbers, and therefore will not use a LEC's query services, paging providers are concerned that LECs will treat them as residential or business customers, and assess a monthly number portability surcharge on each of the paging provider's "lines" or numbers.

The Commission should clarify its *Order* to ensure that, consistent with FCC precedent, paging providers are treated as co-carriers, and that they are not required to pay impermissible charges premised on treatment as an end user. In particular, the Commission has long held that all CMRS providers, including paging providers, are co-carriers, and LECs must treat them as such.¹¹ It affirmed this holding in the *Local Competition Order*, in which it stated that "CMRS providers meet the statutory definition of telecommunications carriers,"¹² and must be given the

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2000.

¹⁰ For example, the FCC is permitting LECs to recover their direct number portability costs in federally tariffed monthly service charges assessed against end users, and federally tariffed query service charges assessed against other carriers. *Order*, ¶ 75.

¹¹ See, e.g., *The Need To Promote Competition and Efficient Use of Spectrum For Radio Common Carrier Services*, 59 Rad. Reg.2d 1275 (1986); *The Need To Promote Competition and Efficient Use of Spectrum For Radio Common Carrier Services*, 2 FCC Rcd 2910 (1987), *recon.*, 4 FCC Rcd 2369 (1989); *Implementation of Sections 3(n) and 332 of the Communications Act*, 9 FCC Rcd 1411, 1498-1501 (1994) ("*CMRS Second Report and Order*").

¹² *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996* (First Report and Order) ("*Local Competition Order*") 11 FCC Rcd 15499, ¶ 1012 (1996), *reversed on other grounds sub nom. Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997), *cert. granted*, 118 S. Ct. 879 (1998).

same interconnection rights as all other telecommunications carriers.¹³ Similarly, in the context of number portability, the Commission should make it abundantly clear that paging providers are co-carriers, and LECs must afford them the same treatment as afforded other carriers.

IV. CONCLUSION

In order to make the implementation of number portability fairer and more efficient, the Commission should clarify which of the regional database administrators' costs are recoverable and allow affected entities to comment on the expenditures of the regional database administrators. In addition, the Commission should reiterate that, for the purposes of number portability, paging providers are co-carriers and are entitled to be treated as such.

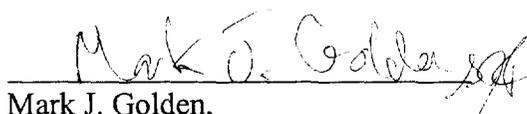
Respectfully submitted,

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¹³ *Id.*, ¶¶ 1041-1042.