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

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

OPPOSITION OF VANGUARD CELLULAR SYSTEMS, INC.

Vanguard Cellular Systems, Inc. ("Vanguard"), by its attorneys, hereby submits this opposition to several petitions for reconsideration or clarification of the Commission's *Third Report and Order* in the long-term number portability proceeding.[1/] For the reasons described below, the Commission should affirm its decision to prohibit incumbent local exchange carriers ("ILECs") from using general overhead loading costs in calculating carrier-specific costs directly related to providing number portability. Further, the Commission should not permit ILECs to assess end user charges on carriers purchasing Feature Group A access or other line side services and should recognize that WorldCom's request that all carriers be included in the true-up formula base if a true-up mechanism is employed by the regional database administrator could result in double payments for shared local number portability costs.

As a major independent cellular carrier, Vanguard serves more than 675,000 customers in 28 cellular MSAs and RSAs in 9 states. Under the Commission's rules implementing local number portability ("LNP"), Vanguard is required to acquire the capability to route ported

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1/ *See* Telephone Number Portability, *Third Report and Order*, CC Docket No. 95-116, RM 8535, released May 12, 1998 ("*Third Report and Order*").

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numbers by December 31, 1998 and to offer service provider portability by March 31, 2000.[2] Until query capabilities are available from wireless equipment vendors, Vanguard must purchase query services from the ILECs. Because issues of cost recovery affect both the query charges paid by carriers and the costs Vanguard incurs in providing LNP, Vanguard has a direct interest in this proceeding.

I. THE COMMISSION SHOULD AFFIRM ITS DECISION TO PROHIBIT THE USE OF OVERHEAD LOADING FACTORS IN CALCULATING CARRIER-SPECIFIC COSTS.

In its *Third Report and Order*, the Commission determined that it would not permit carriers to use general overhead loading factors in calculating carrier-specific costs directly related to providing number portability.[3] The Commission reasoned that carriers already allocate general overhead costs to their rates for other services and that allowing these costs to be added to LNP could result in a double recovery.[4] However, several ILEC petitioners seek reconsideration of this prohibition and request that the Commission permit ILECs to include general overhead factors in the category of recoverable carrier-specific costs for LNP.[5] The petitioners claim that these overheads should be treated no differently than overheads for other

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[2] *See* Telephone Number Portability, *Petition for Extension of Implementation Deadlines of the Cellular Telecommunications Industry Association*, CC Docket No. 95-116, DA 97-2579, released September 1, 1998 ("*CMRS Deferral Order*").

[3] *Id.* ¶ 74.

[4] *Id.*

[5] *See* Petition for Expedited Reconsideration and Clarification of Ameritech at 4-7; Bell Atlantic Petition for Reconsideration at 3-4 ("Bell Atlantic Petition"); SBC Communications, Inc. Petition for Clarification and Reconsideration at 4-7 ("SBC Petition"); Petition of Sprint Local Telephone Companies for Reconsideration and Clarification at 1-4.

new services and that failure to recover general overheads in the LNP query context could mean that other ILEC services would be disproportionately burdened.

The ILECs fail to acknowledge that the Commission must adopt a limiting principle as to what factors may be considered in calculating the relevant direct and recoverable costs of LNP. By their very nature, overhead factors are not direct costs and are not incurred to provide number portability. They are, literally, the costs of being in business. A decision to permit ILEC use of overhead loading factors would make the Commission's cost recovery process even more susceptible to manipulation and anticompetitive conduct than it already is.[6] Absent some limiting factor, carriers will have the opportunity and incentive to include unrelated costs in the calculation of carrier-specific costs for LNP. Moreover, the use of general overhead loading factors would make the process of reviewing "direct" costs more complex and more subjective. Unless the Commission is prepared to review and evaluate each ILEC's methodology for developing and allocating general overheads among services, and particularly to LNP query services, the Commission must affirm its decision to prohibit the use of any general overhead loading factors in calculating the carrier-specific costs of LNP.

II. CARRIERS SHOULD NOT BE PERMITTED TO ASSESS END USER CHARGES ON CARRIERS PURCHASING FEATURE GROUP A SERVICE.

In its *Third Report and Order*, the Commission concluded that it would allow ILECs subject to rate-of-return or price-cap regulation to recover their carrier-specific costs of number

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[6] As demonstrated by the ILECs' query tariffs, there already is a substantial risk of such manipulation. *See generally* Number Portability Query Services, *Order*, CC Docket No. 98-14, FCC 98-204, released August 19, 1998.

portability through an interim interstate surcharge assessed on ILEC end-users.[7] 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-distance calls, we will not allow LECs to recover long-term number portability costs in interstate access charges.[8]

As a result, the Commission determined that it would not allow ILECs to recover LNP costs in interstate access charges and permitted (but did not require) ILECs to recover such costs from their own end user customers.[9]

Despite the Commission's determination not to permit ILECs to recover LNP costs in interstate access charges, Bell Atlantic and SBC seek authority to assess an end user portability charge on carriers purchasing Feature Group A ("FG-A") lines.[10] The ILECs claim that FG-A carrier customers receive the benefits of portability functionality through their purchase of FG-A access.[11] Essentially, Bell Atlantic and SBC request that the Commission reclassify carriers that

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[7] *Id.* ¶¶ 9, 135.

[8] *Id.* ¶ 135.

[9] *Third Report and Order,* ¶ 135.

[10] *See* Bell Atlantic Petition at 1; SBC Petition at 1-2.

[11] The *Third Report and Order* permits ILECs to assess end user per line charges on resellers and carrier purchasers of switch ports, because those carriers will receive "all their number portability functionality through these arrangements." *Third Report and Order* at ¶ 146. In contrast, the Commission prohibited ILEC end user assessments on carrier purchasers of local loops "because the unbundled loop does not contain the number portability functionality." *Id.* The Commission observed that because the loop purchaser would still be responsible for providing such functionality, and incurring the corresponding cost, an ILEC end user surcharge would be unjustified. *Id.*

purchase FG-A as end users that may be billed the end user surcharge as well as charges for any ILEC queries performed.

The Commission should not permit carriers to be assessed as end users simply because they purchase line side access. Doing so would permit the ILECs to recover LNP costs through interstate access charges, albeit indirectly. More importantly, the Commission should reaffirm that carriers that connect at the line side are not responsible for number portability charges. For instance, many CMRS providers obtain line side interconnection under Type 1 arrangements. These providers are *not* receiving their portability functionality via these arrangements, but still must make their own provisions for portability functionality. Thus, CMRS carriers are analogous to the Commission's example of purchasers of local loops for whom the imposition of an end user charge would be unjustified and not competitively neutral. Moreover, as proposed, this surcharge apparently would require carriers purchasing FG-A or Type 1 interconnection to purchase portability functionality, regardless of whether that functionality has any utility for the purchasing carrier. There is no basis for permitting ILECs to force carriers purchasing FG-A or Type 1 interconnection to also purchase portability functionality. For these reasons, the Commission should not permit ILECs to assess an end user charge on CMRS carriers purchasing line side interconnections.

III. ANY TRUE-UP OF SHARED COSTS MUST ACCOUNT FOR THE RECOVERY OF SHARED COSTS VIA CARRIER CHARGES.

Acknowledging that carriers had to take action to implement portability prior to Commission adoption of a cost recovery regime, the *Third Report and Order* permits regional portability administrators and regional LLCs to adopt true-up mechanisms to adjust the future

bills of carriers that participated in agreements with regional administrators. The Commission took this approach so that the shared costs each carrier contributes will approximate what those carriers would have paid had an end user revenue allocator been in place from the outset.[12] In its Petition, WorldCom, Inc. ("WorldCom") requests clarification that *all* carriers must bear their "proportionate share" of the total Number Portability Administration Center ("NPAC") shared costs.[13] WorldCom's view is that any true-up must ensure that it be reimbursed for its contributions to shared costs made at earlier stages of LNP implementation. WorldCom claims that if other carriers are not assessed for shared regional administrative costs, it will suffer a competitive disadvantage.

As the Commission provided in the *Third Report and Order*, the administrator's costs are to be treated in the first instance as a shared cost. However, once this shared cost is distributed to carriers based on the end user revenue allocation specified by the Commission, the Commission treats each carrier's portion of these shared costs as a carrier-specific cost directly related to providing number portability.[14] Thus, ILECs performing queries for CMRS carriers are recovering their portion of the shared administrator's charges from other carriers already. Any true-up adopted by administrators has to be sensitive to this particular potential for double

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[12] *Third Report and Order*, ¶ 117.

[13] According to WorldCom, the true-up allocation mechanism to be used by limited liability companies and the local number portability administrator ("LNPA") should cover the entire base of all carriers, including PCS carriers, other wireless carriers, CLECs and ILECs; the regional LNPAs must bill and collect each carrier's proportionate share of the costs of the regional database and issue credits to carriers that have been paying via user agreements to pay for shared NPAC costs. *See* WorldCom, Inc. Petition for Clarification Or, In the Alternative, Reconsideration at 2-10.

[14] *Third Report and Order*, ¶ 87.

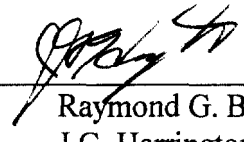
recovery of shared costs. A "pure" true-up, as proposed by WorldCom, would not address this double recovery problem and thus would not be competitively neutral.

IV. CONCLUSION

The Commission adopted its *Third Report and Order* to ensure that telecommunications carriers bear the costs of LNP in a competitively neutral manner, as required by Section 251(e)(2) of the Communications Act.[15/] The cost recovery rules adopted in the *Third Report and Order* and discussed in this opposition are a reasonable means of accomplishing this goal and should, therefore, be affirmed on reconsideration. Accordingly, Vanguard respectfully requests that Commission reject the petitions and affirm those aspects of its LNP cost recovery regime.

Respectfully submitted,

VANGUARD CELLULAR SYSTEMS, INC.



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September 3, 1998

15/ 47 U.S.C. § 251(e)(2).

CERTIFICATE OF SERVICE

I, Joslin M. Arnold, a secretary at Dow, Lohnes & Albertson, PLLC, do hereby certify that on this 3rd day of September, 1998, a copy of the foregoing Opposition of Vanguard Cellular Systsems, Inc. was sent by hand delivery where indicated and by first class mail to the following:

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