

ORIGINAL

DOCKET FILE COPY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D C. 20554

SEP 16 1998

SEP 16 1998

_____)
In the Matter of)
)
Telephone Number Portability)
)
)
_____)

CC Docket No. 95-116

AT&T CORP. REPLY COMMENTS

Mark C. Rosenblum
Roy E. Hoffinger
James H. Bolin, Jr.

Its Attorneys

Room 3247H3
295 North Maple Avenue
Basking Ridge, NJ 07920
(908) 221-4617

September 16, 1998

C+4

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY.....	i
I. THE ILECS' COMMENTS FAIL TO PRESENT MEANINGFUL EVIDENCE CONCERNING THEIR JOINT COSTS	1
II. THE COMMISSION SHOULD REJECT GTE'S REQUEST THAT IT REFRAIN FROM PROVIDING GUIDANCE ON RECOVERY OF JOINT COSTS.....	4
III. AMERITECH'S CONTENTIONS CONCERNING OVERHEAD COSTS ARE BASELESS.....	4
IV. THE COMMISSION SHOULD REJECT ILECS' ATTEMPTS TO AUTOMATICALLY ATTRIBUTE THE COSTS OF UPGRADES TO LNP	7
CONCLUSION.....	11
AT&T Exhibit 1	
AT&T Exhibit 2	

SUMMARY

The ILECs' comments in the instant proceeding, like the LNP tariffs they have filed to date, fail to provide information sufficient to permit either the Commission or commenters to assess the ILECs' proposals for allocating their joint costs. The ILECs' comments offer only high-level, narrative descriptions of the processes they purportedly used, or will use, to derive their LNP surcharges and query charges. This information is patently insufficient to carry the ILECs' burden of proof.

The Commission should reject GTE's proposal that each ILEC be permitted to devise its own methods for recovering joint costs, and instead should use this proceeding to provide binding guidelines as to the types of costs that ILECs may recover and the support that they must provide in order to do so. By providing such guidance the Commission can both facilitate its own review of ILEC tariffs, and ensure that the next round of LNP tariff filings, in early 1999, will conform more closely to its prior orders.

Ameritech repeats the arguments it offered in its petition for reconsideration of the Cost Recovery Order that the Commission should permit ILECs to use so-called "general overhead factors" in calculating the cost of their LNP query services. For the reasons AT&T offered in its opposition to Ameritech's petition, Ameritech's claims are baseless. Moreover, even a brief review of the so-called "overhead" costs that the ILECs have sought to impose makes clear that they are unjustifiable. AT&T's reply comments compare the ILECs' claimed LNP overhead rates to the overheads that state commissions have authorized for UNE rates, and show that the lowest ILEC LNP overhead is more than twice as high as the highest state-approved UNE overhead rate (and many ILEC LNP overheads are many times higher).

Finally, the ILEC commenters offer various schemes that seek to attribute the costs of network upgrades automatically to LNP, and to thereby subsidize their services that also utilize those upgrades. The Cost Recovery Order expressly rejects such an approach, however. Even when an ILEC has incurred an incremental and legitimate cost directly related to providing LNP, it nevertheless may not attribute that entire expense to LNP if its investment supports services or functionalities other than number portability.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D C. 20554

In the Matter of)
)
)

Telephone Number Portability)
)
)
)
)

CC Docket No. 95-116

AT&T CORP. REPLY COMMENTS

Pursuant to the Commission's recent Cost Recovery Order¹ in the above-captioned docket, AT&T Corp. ("AT&T") hereby submits its reply to the comments of other parties concerning ILECs' recovery of "joint costs" -- that is, costs that must be apportioned between local number portability ("LNP")-related services and other services.

I. THE ILECS' COMMENTS FAIL TO PRESENT MEANINGFUL EVIDENCE CONCERNING THEIR JOINT COSTS

The Cost Recovery Order permits ILECs to recover, via federally tariffed end user surcharges and LNP query charges, only costs that are "directly related to providing long-term number portability"² As AT&T showed in its comments, that order's

¹ Third Report and Order, Telephone Number Portability, CC Docket No. 95-116, FCC 98-82 (released May 12, 1998), ¶ 75 ("Cost Recovery Order"). A list of parties submitting comments and the abbreviations used to identify them are set forth in an appendix to these reply comments. All citations are to parties' comments in the instant proceeding, unless otherwise indicated.

² Id., ¶ 9.

requirement that ILECs tariff cost-based LNP surcharges and query charges squarely places the burden of justifying those charges on the ILECs themselves.³ Despite this clear allocation of the burden of proof, the ILECs' comments in the instant proceeding, like the LNP tariffs they have filed to date, fail to provide information sufficient to permit either the Commission or interested parties to assess the ILECs' proposals for allocating joint costs. Far from providing detailed information about the joint costs they contend should be allocated to LNP, if any, and the methods and models they used to derive those costs, the ILECs simply offer high-level, narrative descriptions of the processes they purportedly used, or will use, to derive their LNP surcharges and query charges.

BellSouth, for example, filed lengthy comments, and asserted that it sought "not only to propose allocation methodology to apply to joint costs, but also to describe all identified direct costs it has incurred to provide LNP."⁴ But BellSouth's lengthy narrative offers not a scintilla of data on the actual expenses it allegedly has incurred, or the formulas it proposes to use to allocate them.

BellSouth's August 12, 1998 LNP query tariff filing in no way cures this glaring omission.⁵ That transmittal provides only that BellSouth's claimed "total unit investment" and associated charges determined by applying capital and operating factors to

³ See AT&T, pp. 1-3.

⁴ BellSouth, p. 2.

⁵ See BellSouth Transmittal No. 474, F.C.C. Tariff No. 1, August 12, 1998, ("BellSouth LNP Tariff").

that figure, and a category of expenses denominated "noninvestment related unit costs."⁶ At no point in its tariff filing does BellSouth provide a single number or calculation to indicate how these costs were determined.

Moreover, BellSouth's completely unsubstantiated "total unit costs" do not actually determine the rates it intends to charge. After calculating a total unit cost of \$.001908,⁷ BellSouth seeks to impose a charge of \$.005 per LNP query, or 262% of its purported total costs to provide that service. Thus, even if BellSouth's cost calculations were valid (and it has not provided any evidence to suggest that they are), its calculation of its unit cost appears to bear no relationship to the price it seeks to charge for queries.

BellSouth's sole reference to this discrepancy appears at page 4 of its tariff's D&J, which blandly states that:

The usage based query rates for the new BS LNP Database Services are set at a level to recover direct and shared costs of BS LNP Database Services and provide a reasonable contribution to common and overhead costs.

In short, BellSouth arrived at its proposed LNP query rate by imposing a stunningly bloated -- and utterly unjustified and unexplained -- 162% additive to recover unspecified "common costs" and overhead. This "take our word for it" approach is typical of all of the ILEC comments in this proceeding and the LNP tariffs filed to date, and is no more supportable with respect to identification and allocation of common costs than it is to other costs.

⁶ See *id.*, Appendix B, Workpapers 1 & 2

⁷ See *id.*, Appendix B, Workpaper 2, p. 2

II. THE COMMISSION SHOULD REJECT GTE'S REQUEST THAT IT REFRAIN FROM PROVIDING GUIDANCE ON RECOVERY OF JOINT COSTS

GTE argues that the Commission should not adopt standards to govern ILECs' allocation of joint costs, and instead "proposes that carriers be allowed to develop an allocation method that is most suited to their unique situations."⁸ But if and to the extent that a given carrier's situation is unusual, such distinctions can readily be captured in individual ILEC tariff filings. They do not justify leaving the allocation methodology to the monopolist's discretion, subject to only limited tariff review proceedings. The Commission plainly can -- and by instituting this proceeding has made clear that it intends to -- provide binding guidelines as to the types of costs that ILECs may recover and the support that they must provide in order to carry their burden of proof that their LNP tariffs comply with the Commission's rules. By providing such guidance the Commission can both facilitate its own review of ILEC tariffs, and ensure that the next round of LNP tariff filings, in early 1999, will conform more closely to its prior orders.

III. AMERITECH'S CONTENTIONS CONCERNING OVERHEAD COSTS ARE BASELESS

Ameritech argues that the Commission should permit ILECs to use so-called "general overhead factors" in calculating the cost of their LNP query services.⁹ Ameritech's comments simply repeat argument offered in its petition for reconsideration of the Cost Recovery Order, and proffer the same deeply flawed consultant's report that it attached to

⁸ GTE, p. 5.

⁹ See Ameritech, pp. 11-12.

its petition. As a preliminary matter, these claims have no place in this proceeding, which seeks not to rewrite the Cost Recovery Order, but to implement it. But in all events, Ameritech's arguments have not improved with repetition and should be rejected.

AT&T hereby incorporates into this pleading by reference, in its entirety, its opposition to the petitions for reconsideration of the Cost Recovery Order, and will not burden the Commission by repeating the arguments it raised there¹⁰ As AT&T showed in its opposition, the Cost Recovery Order correctly recognized that an ILEC's "general overhead" -- whether referred to by that name or by some other label -- is not directly caused by number portability, and to recover such costs via LNP charges would lead to double-recovery.¹¹

Even apart from the impropriety of including general overhead expenses in LNP-related tariffs, the LNP tariffs filed to date have sought to use the concept of "general overhead" (or "shared costs," "joint costs," or some similar label) as a license to wildly inflate their portability-related charges. Indeed, "general overhead" represents the largest single factor in the purported LNP costs claimed in the current ILEC LNP tariffs. Further, in some tariffs an ILEC simply tacks on an additional amount as "margin" or "markup," without even attempting to attribute such charges to any alleged costs it has incurred.

¹⁰ See AT&T, Opposition to Petitions for Reconsideration, filed September 3, 1998, pp. 4-7, in Third Report and Order, Telephone Number Portability, CC Docket No. 95-116, FCC 98-82 (released May 12, 1998) ("AT&T Opposition to Reconsideration").

¹¹ See Cost Recovery Order, ¶ 74.

Even a cursory analysis makes plain that the expenses claimed in the ILEC commenters' LNP tariffs as "margin," "overhead" and the like are insupportably bloated. Exhibit 1 to these comments lists the effect, as a percentage additive to the ILECs' purported direct costs to implement LNP, of the various "general overhead" and other factors the ILEC commenters have employed in their current LNP query tariffs. As that Exhibit shows, these items increase ILECs' claimed LNP costs by more than 100% in some cases. In stark contrast, Exhibit 2 depicts the joint and common cost factors that State Commissions have established for unbundled network elements. These UNE cost factors are remarkably similar from state to state, and none of them exceeds 15% -- a figure that is less than half of the lowest "overhead" figure claimed by the ILEC commenters. Meanwhile, Exhibit 1 also shows that the overhead factors employed in Sprint's and Frontier's LNP tariffs are merely 13.34% and 8.49%, respectively, making clearer still that the ILEC commenters' proposed overheads are wholly unjustifiable.

The incremental overhead figures established in UNE cost proceedings provide a reasonable benchmark estimate of the true overhead costs that the Commission should expect to find are created by LNP. The state commission decisions listed in Exhibit 2 applied a standard that is identical in all relevant respects to that established by the Cost Recovery Order: that is, they sought to determine the incremental overhead costs created by providing the facilities and services at issue. Comparing the "overhead" costs claimed in the ILEC commenters' LNP tariffs with state-approved UNE overhead factors lays bare the ILECs' claims that they seek to employ general overhead factors only as a means to recover their actual costs.

IV. THE COMMISSION SHOULD REJECT ILECS' ATTEMPTS TO AUTOMATICALLY ATTRIBUTE THE COSTS OF UPGRADES TO LNP

The ILEC commenters offer a variety of untenable arguments concerning the proper allocation of the costs of network upgrades. These contentions have a common theme: the ILECs seek to attribute the costs of upgrades automatically to LNP, thereby obtaining an implicit subsidy for other services that also utilize those upgrades. As AT&T's comments demonstrate, the Cost Recovery Order expressly rejects such an approach. Even when an ILEC has incurred an incremental and legitimate cost directly related to providing LNP, it nevertheless may not attribute that entire expense to LNP if its investment supports services or functionalities other than number portability¹²

Although it provides few specifics, U S West asserts that it should be permitted to recover the costs of switch upgrades or replacements in rural areas because it would not have deployed new software or hardware in those areas but for LNP implementation. U S West's argument is fatally flawed in at least two respects.

First, it is clear that competitive pressures would force U S West to upgrade many of its switches without regard to LNP implementation. U S West's comments assert that it is being challenged by "multiple" CLECs that are seeking to enter markets in which it provides LNP -- including "small towns in Iowa and other rural locales."¹³ CLECs attempting to compete using resale or unbundled switching do not need LNP, but can simply utilize numbering resources that have been assigned to the incumbent LEC

¹² See AT&T, pp. 3-9.

¹³ U S West, p. 5.

Accordingly, those CLECs that have requested LNP in order to compete with U S West are operating, or plan to operate, their own switches. These facilities-based CLECs are highly unlikely to try to enter local markets using antiquated equipment, but rather will utilize switches that are capable of providing vertical features. In order to compete with the offers that these CLECs will be able to make to its current customers, U S West will be forced to try to match them service for service -- including caller ID and other features that U S West may not today offer in some areas. The Commission's LNP rules require facilities-based CLECs to give ILECs advance notice of the areas in which they seek to compete, by requesting that LNP be made available in specific switches. Armed with the knowledge that local competition is coming to a given area, U S West could be expected to upgrade its network in those areas (for example, to enable it to provide new services or to lower its costs), whether or not those upgrades were also utilized for LNP.¹⁴

Second, U S West has stated in other Commission proceedings that it is strongly committed to upgrading its facilities in rural areas. For example, in its recent § 706 petition, U S West asserted that it is ready and willing to upgrade its network in order to provide broadband Internet access to the rural communities in its territory.¹⁵ Yet in the instant proceeding, U S West asserts that it had no intention of providing upgraded services to rural areas in the absence of LNP implementation, and that it would be economically

¹⁴ See AT&T, p. 7.

¹⁵ See, e.g., U S West, Petition for Relief, p. 41 filed February 25, 1998 in Petition of U S West Communications, Inc. For Relief From Barriers To Deployment of Advanced Telecommunications Services, CC Docket No. 98-26.

irrational for it to do so. In short, U S West asks the Commission to believe that it would eagerly provide high-speed Internet access and other advanced services to rural America, but not call waiting or caller ID. These inherently contradictory claims strongly underscore the need to carefully scrutinize ILECs' claims that LNP is the "but, for" cause of a particular upgrade, as ILECs have strong incentives to attribute costs to LNP surcharges and query charges.

Ameritech and SBC both argue that if an ILEC can present bills from its vendors purporting to certify that a particular upgrade is directly related to LNP, then that should be sufficient to meet an ILECs' burden of proof that the cost of that upgrade is fully recoverable.¹⁶ This claim is patently baseless. An ILEC's vendor cannot be presumed to have any special knowledge as to how an ILEC will actually employ a particular piece of hardware or software. Vendors also have no particular knowledge of the Commission's LNP cost recovery requirements, and no duty of candor or truthfulness to the Commission concerning their bills. Further, a vendor would be faced with an obvious moral hazard, as it would have a strong incentive to please its ILEC customers by acceding to requests to "certify" an expense as LNP-related.

SBC proposes that expenses incurred for switch software purchased after the date of the Commission's First Report and Order in its LNP docket should automatically

¹⁶ See Ameritech, p. 16 (vendor bills should create a "rebuttable presumption" that a cost is directly related to LNP); SBC, p. 5 (arguing that "a carrier should be permitted to rely upon the assessment of the vendor supplying" an OSS modification").

be presumed to be direct costs of LNP.¹⁷ This argument is facially absurd. The fact that a piece of software was purchased on a particular date has no bearing on whether it represents an LNP-related expenditure. Moreover, the date on which an ILEC acquires software is, if anything, even more irrelevant to the question of whether it can be employed to provide other services in addition to LNP.

Finally, Bell Atlantic argues that its "only joint costs are the costs of upgrading switching systems with software, and in some cases, hardware to prepare them to be able to accept the software with the number portability functionality."¹⁸ This claim cannot be credited, as it is incontrovertible that signaling and other ILEC assets will be used for other functions in addition to LNP, and their costs therefore must be allocated between those services. Further, Bell Atlantic's proposed means to allocate what it regards as "joint costs" is facially unreasonable. Bell Atlantic argues that LNP "should bear the same proportion of the generic upgrade cost of a particular switch as the number portability software feature is of the total feature package cost for the switch."¹⁹ Under this proposal, however, the portion of a software generic that Bell Atlantic could attribute to LNP would depend directly on the amount that it elected to spend on other upgrades at the time it installed number portability. If Bell Atlantic chose to delay other upgrades for a short period, it could thereby shift the entire cost of the software generic to LNP without regard

¹⁷ SBC, p. 4.

¹⁸ Bell Atlantic, p. 6.

¹⁹ Bell Atlantic, p. 7.

to whether it then used that generic to support other functions. The Cost Recovery Order clearly does not countenance that result.

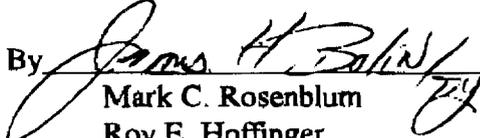
CONCLUSION

AT&T urges the Commission to require that any ILEC tariffing LNP end-user surcharges and query services allocate the costs of those services in accordance with the principles outlined above and in AT&T's comments

Respectfully submitted,

AT&T CORP.

By



Mark C. Rosenblum

Roy E. Hoffinger

James H. Bolin, Jr.

Its Attorneys

Room 3247H3
295 North Maple Avenue
Basking Ridge, NJ 07920
(908) 221-4617

September 16, 1998

LIST OF COMMENTERS

Ameritech

AT&T Corp. ("AT&T")

Bell Atlantic

BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth")

GTE Service Corporation ("GTE")

SBC Communications, Inc. ("SBC")

U S West Communications, Inc. ("U S WEST")

Additive Effect of " Overhead" Factors Claimed in ILEC LNP Tariffs

ILEC	Additive %	Cite	Comments
Ameritech	77.47	Transmittal No. 149 Exhibit 2	Applied a 1.7747 overhead loading factor to incremental costs per query
Bell Atlantic	81.91*	Transmittal No. 1036 Workpaper 6-1, p. 1	Applied a 1.6057 overhead to Direct Capital Cost per Query; also price exceeds cost by additional 31%
BellSouth	162.05	Transmittal No. 474 Appendix B. Workpaper 2	No overhead or joint and common cost factors are included. The price charged is simply 2.6205 times the claimed cost.
Pacific	54.12	Transmittal No. 1973 Figure 1	Overhead loading factor of 1.46 is applied to Annual Direct Cost/Query. Also 1.2 factor for Contribution to Joint and Common Cost is applied to (Total Annual Direct and Indirect Unit Cost + Cost Additive)
SWBT	29.85	Transmittal No. 2694, Figure 1	Overhead loading factor of 1.7121 is applied to Annual Direct Cost/Query. Also, factor of 1.2 applied to Contribution to Joint and Common Cost factor is applied to (Total Annual Direct and Indirect Unit Cost + Cost Additive).
USW	141	Transmittal No. 931 Unlabeled last page of workpapers	Factor of 2.41 is simply multiplied by per-query direct costs.
Sprint	13.34	Transmittal No. 63 Exhibit 1-1	Overhead loading factor of 1.18 is applied to Direct Capital Costs per query. Factor is not applied to direct expenses or EO switching & transport

* Additive percentage for tandem queries

AT&T Exhibit 1 – (Continued)

Frontier	8.49	Transmittal No. 10 Exhibit 1, Sched. 1 Exhibit 2, Sched. 1-4	Applied 2.8% Corporate Operations Expense Factor + .38% General Support Assets Factor to Total Investment
----------	------	---	---

**State-Approved Joint and Common Cost Factors for
Unbundled Network Elements**

STATE	ILEC	PERCENTAGE	DECISION
Arizona	USWC	15%	U-3021-96-440 et al., 1/30/98
Arkansas	SWBT	Proprietary	Docket 96-395-U, Order 13, 5/11/98
Delaware	BA	10%	Order No. 4542, 7/8/97, pp. 21-22
Florida	BS	5.12%*	Decision No. PSC-98-0604-FOF-TP, 4/29/98
Georgia	BS	5.39%*	Docket/Order 7061-U, 12/16/97
Idaho	USWC	13%	USW-T-96-15, 3/24/97
Indiana	Ameritech	14.93	Cause No. 40611, 6/30/98
Iowa	USWC	13.6%	RPU-96-9, 4/23/98
New Jersey	BA	10%	NJ Board of Public Utilities Opinion in Docket No TX95120631, 12/2/97, p. 75
Kentucky	BS	8.04%*	Docket/Order PSC 96-482, 1/29/97
Maryland	BA	12%	Order No. 74365
Missouri	SWBT	Proprietary	PSC of Missouri – Consolidated Case Nos. TO-97-40 and TO-97-67 (AT&T and MCI Arbitrations respectively, Final Arbitration Order issued 7/31/97, effective date 8/20/97)
Montana	USWC	14%	Decision 96.11.200, 3/20/97
Pennsylvania	BA	Proprietary	Docket A - 310203F0002, Final Opinion and Order, 8/7/97, pp 7-9.

* Represents Common Cost percentage. Shared Cost percentage is variable in BellSouth states

AT&T Exhibit 2 – (Continued)

South Carolina	BS	4.79%*	SC Decision No. 98-214 issued 6/1/98
Texas	SWBT	13.1%	PUC of Texas, Consolidated Docket Nos. 16189, 16196, 16226, 16285, 16290, 16455, 17065, 17579, 17587, and 17781. 16226 and 17579 were AT&T arbitration cases.
Virginia	BA	8.01%	Case No. PUC970005, State Corporation Order, 5/22/98
West Virginia	BA	10.2%	Case Nos. 96-1516-T-PC, 96-1561-T-PC, 96-1009-T-PC and 96-1533-T-T, Commission's Order 4/21/97, pp. 45-46,

CERTIFICATE OF SERVICE

I, Terri Yannotta, do hereby certify that on this 16th day of September, 1998, a copy of the foregoing "AT&T Corp. Reply Comments" was mailed by U.S. first class mail, postage prepaid, to the parties listed below:

Larry A. Peck
Frank Michael Panek
Ameritech
Room 4H86
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

John M. Goodman
Michael E. Glover
Bell Atlantic
1300 I Street, N.W.
Washington, DC 20005

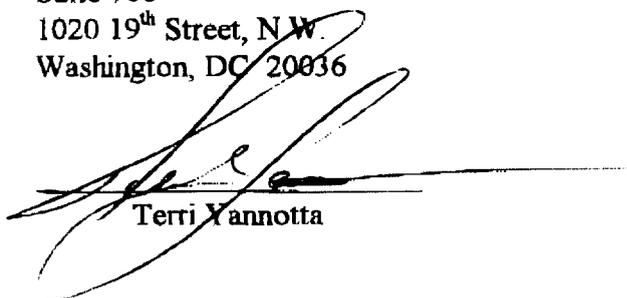
M. Robert Sutherland
Stephen L. Earnest
BellSouth Corporation
Suite 1700
1155 Peachtree Street, N.E.
Atlanta, GA 30309-3610

John F. Raposa
GTE Service Corporation
600 Hidden Ridge, HQE03J27
P.O. Box 152092
Irving, TX 75015-2092

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W., Suite 1200
Washington, DC 20036

Robert M. Lynch
Durward D. Dupre
Hope Thurrott
SBC Communications, Inc.
One Bell Plaza, Room 3023
Dallas, TX 75202

James T. Hannon
Dan L. Poole
U S West Communications, Inc.
Suite 700
1020 19th Street, N.W.
Washington, DC 20036



Terri Yannotta

September 16, 1998