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Ex parte

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: ***BellSouth Corporation, Petition for Rulemaking to Change The Distribution Methodology for Shared Local Number Portability and Thousands-Block Number Pooling Costs,* Petition for Rulemaking, RM-11299; *Petition of Verizon and Verizon Wireless for Declaratory Ruling To Assess NPAC Database Intra-Provider Transaction Costs on the Requesting Provider, WC Docket No. 11-95; Numbering Policies for Modern Communications, WC Docket No. 13-97; IP-Enabled Services, WC Docket No. 04-36; Telephone Number Requirements for IP-Enabled Services Providers, WC Docket No. 07-243; Telephone Number Portability, CC Docket No. 95-116; Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Connect America Fund, WC Docket No. 10-90; Numbering Resource Optimization, CC Docket No. 99-200; Petition of Vonage Holdings Corp. for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources***

Dear Ms. Dortch:

On Monday, November 24, 2014, Lisa Youngers and I, of XO Communications, LLC ("XO") met with Pamela Arluk, Lisa Gelb, Amy Goodman, Marilyn Jones, Deena Shetler, and Ann Stevens, all of the Wireline Competition Bureau, to discuss issues related to the allocation of shared industry costs of number porting and pooling. Dawn Lawrence of XO participated in the meeting via telephone.

In particular, we reiterated XO's opposition to BellSouth's Petition for Rulemaking[1] and Verizon's Petition for Declaratory Ruling,[2] both of which have sought

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1 BellSouth Petition for Rulemaking to Change the Distribution Methodology for Shared Local Number Portability and Thousands-Block Number Pooling Costs, RM-11299 (filed Nov. 3, 2005) ("BellSouth Petition").

2 Petition of Verizon and Verizon Wireless for Declaratory Ruling to Assess NPAC Database Intra-Provider Transaction Costs on the Requesting Provider, WC Docket No. 11-95 (filed May 31, 2011) ("Verizon Petition").

to change the current methodology for allocation of the costs of the Number Portability Administration Center ("NPAC") databases.[3] XO stressed that, despite ILEC claims in their petitions, there has been no change in the telecommunications industry that supports changing the current methodology, which still satisfies the competitive neutrality standard.

The rationale and application of the following two-prong competitive neutrality test adopted in 1998 by the Commission in the *Third R&O* is still valid today:

> [T]he 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]

Evaluation of the first prong "focuses on the incremental cost of serving the next subscriber that ports a number,"[5] while the second prong of the test considers whether a carrier's cost of providing number portability may be too large in relation to its expected profits.[6] Regarding the second prong, the Commission highlighted that "if an incumbent LEC and a new entrant were to be assessed the same amount of number portability costs, the small entrant's costs might be sufficiently large when compared to its projected profit to drive the entrant out of the market or even prevent it from entering in the first place."[7] Importantly, the Commission rejected the argument that the competitive neutrality requirement prohibits a distribution mechanism that shifts costs among carriers, emphasizing that, in fact, "section 251(e)(2) *requires* the distribution of number portability costs among carriers if necessary to ensure competitive neutrality."[8] Thus, the fact that ILECs may pay a larger portion of the shared costs does not undermine competitive neutrality, but rather satisfies that requirement, due to their larger size and amount of end-user telecommunications revenues. As the Commission noted, "[b]ecause carriers' allocations of the shared costs will vary directly with their end-user revenues, their share of the regional database costs will increase in proportion to their customer base. Thus, no carrier's portion of the shared costs will be excessive in relation to its expected revenues, and its allocated share will only increase as it increases its revenue stream."[9] Consequently, allocating industry shared costs on an end-user revenue basis

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3 *See* Letter from Thomas Cohen, Kelley Drye and Warren, to Marlene H. Dortch, RM-11299, at 1 (dated April 19, 2007) (opposing BellSouth Petition); XO Comments, WC Docket No. 11-95 (filed July 15, 2011) & XO Reply Comments, WC Docket No. 11-95 (filed August 15, 2011) (both opposing Verizon's Petition); XO Reply Comments at 12-13, WC Docket Nos. 13-97, 04-36, 07-243, and 10-90; CC Docket Nos. 95-116, 01-92, and 99-200; FCC 13-51 (filed Aug. 19, 2013) (reiterating XO's opposition to Verizon's Petition).

4 Telephone Number Portability*, Third Report and Order*, 13 FCC Rcd 11701, ¶ 53 (1998) *("Third R&O").*

5 *Id.* ¶ 55.

6 *Id.* ¶ 44.

7 *Id.*

8 *Id.* ¶ 58 (emphasis added).

9 *Id.* ¶ 107.

does not disproportionately burden the ILECs or disparately affect their ability to earn a normal return.

Furthermore, the Commission was clear in the *Third R&O* that the industry as a whole benefits from NPAC transactions that maintain accurate data in the databases:

> The entire industry benefits from the maintenance of reliable regional databases for providing number portability: unless carriers download data, they will be unable to terminate traffic to the appropriate enduser; unless carriers upload ported numbers to the databases, the databases will be inaccurate, making downloads useless for current and future database participants alike. Thus, *all* carriers that port telephone numbers and *all* carriers that terminate calls to portability-capable NXXs depend on the timely uploading and downloading of information to and from the regional databases to ensure an accurate database and the proper routing of telephone calls. Furthermore, all telecommunications carriers that depend on the availability of telephone numbers will benefit from number portability because it allows subscribers to retain their telephone numbers when changing local service providers, and because it facilitates the conservation of telephone numbers through number pooling.[10]

Most importantly, transactions that maintain accurate database information are beneficial to *all* carriers, not just to the carriers involved in that transaction. In fact, "incumbent carriers actually have the most to gain from the efficient operation of the number portability database because they need it to route much more traffic than competitive LECs."[11]

Verizon has attempted to characterize certain intra-service provider ports and modify transactions as "elective" since they may not be generated by a port from one provider to another (*i.e.*, inter-provider port). However the term "elective" means that an activity is purely optional or unnecessary, which the transactions described below clearly are not. XO and other competitive providers with numbering resources managed only through the NPAC databases must perform intra-provider ports and/or modify transactions for the following:

- *Compliance with the Commission's numbering resource optimization and rate center utilization requirements*. Because the Commission's rules require 75% rate center utilization before a provider may request additional growth blocks of numbers,[12] XO must share numbering resources among its multiple switches in a

10 *Id.* ¶ 89 (emphasis added).

11 Letter from J.G. Harrington, Counsel to Cox Communications, Inc., to Marlene H. Dortch, Secretary, FCC, RM-11299, at 2 (June 21, 2007).

12 Numbering Resource Optimization, *Report and Order and Further Notice of Proposed Rule Making*, CC Docket No. 99-200 (Mar. 17, 2000); *Third Report and Order and Second Order On Reconsideration*, CC Docket No. 96-98, CC Docket No. 99-200, and CC Docket No. 95-116, ¶ 50 (Dec. 12, 2001). Although there is an option to petition a

rate center. Moving a number between its switches requires XO to initiate an intra-provider port transaction in the NPAC database to update the location routing number ("LRN") in the database record for each number moved. By doing so, XO is able to provide services to a customer where XO does not otherwise have sufficient native numbers available, and calls to that customer will route properly.

- *Migrating customers from one switch to another due to network modifications and/or customer selection of new technology or services*. XO has been aggressively upgrading its network to implement IP-based switching technology and encouraging its customers to migrate to IP-enabled services, both of which further the Commission's goal of transitioning to an all-IP network. When, for example, an XO customer currently purchases TDM-based services and wishes to migrate to IP-based services, XO must move that customer's services to route through its IP-based switches. When doing so, XO must initiate an intra-provider port transaction in the NPAC database to update the LRN for each of the customer's numbers so that calls will be properly routed to that customer.
- *Providing customer-requested porting to a new physical location within a rate center*. Although the Commission's rules do not require location porting, there can be no valid argument that an NPAC port transaction allowing a customer to port a number to a new physical location is unrelated to porting. If a customer moves to a location served by a different XO switch than the one serving the customer's original location, XO must move the customer's services to route through the different switch and initiate an intra-provider port transaction in the NPAC database to update the LRN for the customer's number.
- *Changes in routing for certain services (i.e., LIDB, CNAM, CLASS).* When any provider changes the vendor for these services, routing information for these messages must be updated via a modify transaction in NPAC; otherwise a provider would be locked into a single vendor for these services with no competitive options.

If XO were required to incur an additional usage charge for these intra-provider ports, for example, to port a customer number to a different switch or to a new customer location, while a competitor could initiate an inter-port transaction, with no additional usage charge, to port away an XO customer's number to the competitor's IP-based switch, XO would be competitively disadvantaged vis-à-vis its competitors simply because the customer is already an XO customer. Such a policy favoring inter-provider ports over intra-provider ports would not be competitively neutral.

In the meeting, XO explained that while Verizon has claimed that alternatives exist to utilizing the NPAC to achieve the same purposes as these intra-provider ports and/or modify transactions,[13] there are, in fact, no alternatives to updating NPAC data for ported and pooled numbers. Verizon has touted its careful planning and prudent use of the LERG, rather than NPAC, to move NPA-NXX codes to different switches, knowing

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state commission for approval to obtain additional numbers, XO has found this to be a cumbersome process that may take weeks or months for approval and does not provide a timely resolution.

13 Verizon Petition at 8.

full well that use of the LERG for this purpose is not possible for managing thousands-blocks and ported numbers, which are a significant portion of numbering resources for competitive providers.[14] Additionally, XO discussed the attached report from the Commission's own advisory committee, the North American Numbering Council ("NANC"), which investigated certain issues at the request of the Commission staff in the Pricing Policy Division of the Wireline Competition Bureau in 2007.[15] In addition to requesting data about quantities of telephone numbers assigned to various industry segments as well as the quantities of ported and pooled numbers in the NPAC databases, the staff requested:[16]

> For the following 5 services that potentially contain Signaling System 7 (SS7) Destination Point Code (DPC) and Subsystem Number (SSN) data in ported and pooled number records, analyze and identify if any viable alternatives exist to modifying these data fields when changes to the routing of these services' SS7 Transaction Capabilities Application Part (TCAP) messages should become necessary. These 5 services potentially containing DPC and SSN data in ported and pooled number records are as follows:
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> 1. CLASS
> 2. Line Information Database (LIDB)
> 3. Calling Name (CNAM)
> 4. Inter-switch Voice Messaging Message Waiting Indicator (ISVM MWI)
> 5. Wireless Short Message Service Center (WSMSC)

The NANC assigned the task to its Local Number Portability Administration Working Group ("LNPA WG"), which asked its participating companies to discuss the item internally before the LNPA WG discussion and which also invited members of the Alliance for Telecommunications Industry Solutions (ATIS) Network Interconnection Interoperability Forum (NIIF) Network Interoperability Committee (NIOC), whose members are industry recognized SS7 subject matter experts, to participate in the LNPA WG discussion. The LNPA WG finding was as follows:

> After performing a detailed analysis collectively and individually within participant companies, the LNPA WG *did not identify any existing reliable and viable alternatives* to modifying in the NPAC these Destination Point Code (DPC) data fields when changes to the routing of these 5 services' SS7 Transaction Capabilities Application Part (TCAP) messages should become necessary.[17]

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[14] Verizon Petition at 8.

[15] North American Numbering Council Report to the FCC Wireline Competition Bureau Staff, Subject: FCC RM-11299 Action Items, dated October 10, 2007 ("NANC Report").

[16] *See* NANC Report at 5-8.

[17] NANC Report at 8.

Interestingly, a Verizon representative served as co-chair of the LNPA WG at that time and presented the LNPA WG findings to the NANC for its consideration and approval before the NANC Report was submitted to the Commission staff. Yet, Verizon continues to deceptively argue that alternatives exist to modifying this information in the NPAC, knowingly disregarding specific research and findings of the NANC.[18]

Verizon also continues to falsely associate increases in the number of intra-provider and modify transactions with increases in the costs of the NPAC databases: "[i]n the two years since Verizon filed the Petition, the number of intra-company ports and 'modifies,' and *thus* the costs of the NPAC database, have continued to rise."[19] This is patently untrue since, as the Commission is aware, the cost structure for determining the overall industry shared costs was renegotiated with the current NPAC vendor in 2009, so that the shared industry cost allocated among providers each year is established by a flat fee that no longer varies based on the number of NPAC transactions. Moreover, in the *Third R&O*, the Commission "disagree[d] with [the] contention that section 251(e)(2) requires that any allocator encourage carriers to minimize costs, [emphasizing that] [a]lthough minimizing costs is preferable, it is not a goal that stems from, or takes precedence over, the statutory mandate of competitive neutrality."[20] Thus, the ILEC arguments that the Commission must adopt a new methodology to discourage use or minimize costs of the NPAC databases are ill founded.

XO highlighted that the Commission's assessment of the use of the NPAC and overall industry benefits was appropriate in 1998 and remains so today. While the Commission considered usage-based charges and alternative allocators in the *Third R&O*, it ultimately chose "an end-user revenues allocator over those other proposals because each of the alternatives has distinct disadvantages."[21] For examples, "[d]istributing the shared costs among telecommunications carriers in proportion to database use would shift these costs to telecommunications carriers that win more customers because such carriers will perform more uploads…. Consequently, usage-sensitive distribution of the shared costs could 'give one service provider an appreciable, incremental cost advantage over another service provider when competing for a specific subscriber,' as well as 'disparately affect the ability of competing service providers to earn a normal return.'"[22]

There is nothing inherently negative about an increasing number of NPAC transactions; this is simply evidence of a competitive environment where porting is thriving. The Commission recognized that competitive providers would likely initiate

18 Verizon Petition at 7-8.

19 Letter from Ann Berkowitz, Verizon, to Marlene Dortch, Secretary, FCC, Petitions of Vonage, et al, CC Docket No. 99-200; Petition for Rulemaking to Change the Distribution Methodology for Shared Local Number Portability and Thousands-Block Number Pooling Costs, RM-11299; and Petition for Declaratory Ruling to Assess NPAC Database Intra-Provider Transaction Costs on the Requesting Provider, WC Docket No. 11-95 (filed April 5, 2013) (emphasis added).

20 *Third R&O* ¶ 58.

21 *Id.* ¶ 108.

22 *Id.* ¶ 88.

more transactions in the NPAC, which has continued to hold true. The ILECs, on the other hand, have a significant competitive advantage because they maintain a large quantity of NPA-NXX codes assigned before porting and pooling began, thus they typically do not need to update routing information for those resources, and if they do, updates can be performed at the code level in the LERG. By contrast, competitive providers that obtain numbering resources via thousands-blocks and ported numbers must perform more uploads and updates to data in the NPAC since these data for these numbers cannot be updated in the LERG. Therefore, these competitive providers have no choice but to upload updated NPAC data in order for calls to route properly to their customers. The Commission found in the *Third R&O* that "assessing shared costs on a usage-sensitive basis could discourage carriers from performing uploads and downloads, or at least penalize those carriers that do so more frequently."[23] This is exactly what the ILECs are intending to do – penalize competitive providers that need to upload updated information in the NPAC databases more frequently than the ILECs.

In sum, XO stressed that updating and ensuring real-time accurate LRN data, no matter the reason, minimizes service disruptions and ensures proper call routing and completion. Contrary to ILEC claims, competitive providers have no incentive to overuse the NPAC. Providers do not simply update the NPAC as a means of reducing their costs or because it is less expensive than some other methods. Instead, competitive providers update the NPAC because there is *no* alternative way to update routing information for thousands-blocks and ported numbers or for modifying TCAP messages. The ultimate value of the NPAC, though, is not directly gained as providers update the databases or even at the time those updates occur, but is gained later by providers serving end users who place calls to affected telephone numbers – calls that are able to route and complete properly because updated data was uploaded to maintain accurate information in the NPAC databases. Thus, while the impetus for a particular NPAC transaction may be specific to a particular carrier, the result of the transaction is the same as for an inter-provider port, namely, it provides accurate data to ensure proper routing of customer calls. Put simply, if competitive providers like XO did not initiate transactions to update the NPAC databases for impacted numbers or did so less frequently (for example, to avoid high transaction costs), then calls to those numbers would not route properly and call completion rates would likely decline. Any Commission policy that would discourage, minimize, or slow updated information in the NPAC databases would further exacerbate call completion concerns. Therefore, XO urged at the meeting for the Commission to deny the BellSouth Petition and the Verizon Petition and to maintain the current end user revenue-based methodology for allocating shared industry costs for the NPAC.

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[23] *Id.* ¶ 89.

Pursuant to Section 1.1206 of the Commission's Rules, a copy of this letter is being filed electronically in the above-referenced dockets. If you have any questions, please feel free to contact me at (703) 547-2356.

Respectfully Submitted,

/s/
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cc: Pamela Arluk
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