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January 21, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Acting Secretary, FCC
Room TWB-204
445 Twelfth Street, S.W.
Washington, DC 20554

Re: CC Docket No. 95-116 -- Long-Term Number Portability Tariff Filings

Dear Ms. Salas:

Enclosed please find the **public version** of AT&T Corp's Petition To Reject Or Suspend Tariffs in the above-captioned docket. The non-public version of AT&T's petition is being filed this day with the Commission under seal, and under separate cover.

Sincerely,

James H. Bolin, Jr. /ha

James H. Bolin, Jr.

enclosure

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

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JAN 21 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Long-Term Telephone Number Portability)
Tariff Filings)

CC Docket No. 95-116
RM 8535

Ameritech Tariff F.C.C. No. 2,)
Transmittal No. 1186)

Cincinnati Bell Telephone Tariff)
F.C.C No. 35, Transmittal No. 732)

GTE Service Corporation Tariff)
F.C.C. No. 1, Transmittal No. 1190)

Pacific Bell Tariff F.C.C. No. 128,)
Transmittal No. 2029)

Southwestern Bell Tariff F.C.C. No. 73,)
Transmittal No. 2745)

PETITION TO REJECT OR SUSPEND TARIFFS

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January 21, 1999

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SUMMARY

The instant local number portability ("LNP") filings are facially noncompliant with the Commission's orders, and accordingly should be rejected. At a minimum, the tariffs raise substantial questions of lawfulness and should be suspended and set for investigation.

First, Ameritech and GTE flout the LNP Cost Classification Order's requirements governing recovery of OSS costs by seeking to include costs of modifications to billing, maintenance, 911 and other systems which that order expressly held are not "carrier-specific costs directly related to providing number portability."

Second, Ameritech, Pacific and SWBT impermissibly seek to recover, in both their surcharges and query charges, not only their purported incremental costs of implementing LNP, but also the alleged "average" costs of performing queries on their existing signaling networks. In so doing, they attempt to obtain a double-recovery by including embedded costs, again in direct contravention of the LNP Cost Classification Order.

Third, GTE, Pacific and SWBT calculate their costs based on the years 1997-2003 -- seven years, rather than the five years authorized by the Commission.

Fourth, Pacific and SWBT once again seek to force other carriers to purchase utterly unnecessary LNP queries by tariffing an LNP query charge that would apply to every call delivered unqueried to an NXX in which LNP was available, without regard to whether even a single number had in fact been ported in that NXX. The Commission expressly designated these ILECs' plans to charge for such queries as a matter for consideration in its prior LNP tariff investigations, but has yet to resolve whether the proposed charges are proper. Queries for calls to NXXs in which no number has ported are neither necessary to route calls, nor permitted by the Commission's LNP orders.

Fifth, SWBT and Pacific seek to tariff wholly unjustifiable non-recurring charges.

The Commission also has expressly designated this issue for consideration in prior LNP tariff investigations, but has not yet resolved it. The proposed charges are unjustifiably bloated, and should be rejected or set for investigation so that they can be reduced or eliminated by that means.

Finally, AT&T's brief review of the LNP tariffs before the Commission also has revealed a variety of other flaws in those filings. Such obvious errors and omissions in the course of "streamlined" review counsel strongly in favor of the closer scrutiny possible in a full investigation.

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

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PETITION TO REJECT OR SUSPEND TARIFFS

Pursuant to Section 1.773 of the Commission's Rules, 47 C.F.R. § 1.773, and the Procedural Order¹ issued on December 8, 1998, AT&T Corp. ("AT&T") hereby requests that the Commission reject, or suspend for one day and investigate the above-captioned tariff filings by Ameritech, Cincinnati Bell ("CBT"), GTE Service Corporation ("GTE"), Southwestern Bell ("SWBT"), and Pacific Bell ("Pacific") seeking to establish rates for local number portability ("LNP") query services and LNP end-user surcharges.

¹ Order, Long-Term Telephone Number Portability Tariff Filings, CC Docket No. 95-116, RM 8535 (released January 8, 1999) ("Procedural Order").

It is clear on the face of the instant filings that they do not comply with the Commission's LNP orders, and accordingly they should be rejected.² At a minimum, the tariffs at issue raise substantial questions of lawfulness that cannot be dispelled in the highly abbreviated "streamlined" process afforded by this proceeding.

The limited review afforded by this streamlined proceeding represents the Commission's first opportunity to scrutinize ILECs' proposed end-user surcharges. It has been just slightly over one month since the Commission promulgated its LNP Cost Classification Order,³ which provided significant new guidance to ILECs seeking to recover their costs of implementing LNP. In light of the importance and complexity of LNP cost allocation, that order recognized that "the need to distinguish between eligible LNP costs and general upgrade costs will require that LECs provide substantially more detail in filing their [LNP] tariffs than is customary when filing new services tariffs under the price caps recovery mechanism."⁴ The Commission's caution is well-justified. In the earlier rounds of ILEC LNP query tariff filings and the investigations that followed them the ILECs failed even to make a serious attempt to

² A tariff is subject to rejection when it is prima facie unlawful, in that it demonstrably conflicts with the Communications Act or a Commission rule, regulation or order. See, e.g., American Broadcasting Companies, Inc. v. AT&T, 663 F.2d 133, 138 (D.C. Cir. 1980); MCI v. AT&T, 94 F.C.C.2d 332, 340-41 (1983). Suspension and investigation are appropriate where a tariff raises substantial issues of lawfulness. See AT&T (Transmittal No. 148), Memorandum Opinion and Order, FCC 84-421, released September 15, 1984; ITT (Transmittal No. 2191), 73 F.C.C.2d 709, 716, n.5 (1979) (citing AT&T (Wide Area Telecommunications Service), 46 F.C.C.2d 81, 86 (1974)).

³ Memorandum Opinion And Order, Telephone Number Portability Cost Classification Proceeding, CC Docket No. 95-116, RM 8535 (released December 14, 1998) ("LNP Cost Classification Order").

⁴ Id., ¶ 19.

carry their burden of proof.⁵ As the LNP Cost Classification Order found, "the cost support submitted with the initial query service tariffs filed by several ILECs was inadequate to enable the Commission, or interested parties, to ascertain that only eligible LNP costs had been included in the end-user and query service charges."⁶ Accordingly, despite the long history of this proceeding, neither the Commission nor potential commenters have previously had a meaningful opportunity to evaluate ILECs' claimed LNP costs, and the Commission has never found an ILEC LNP tariff to be lawful.

Against this backdrop, the Commission would be ill-advised to permit the instant tariffs to take effect without the more complete review an investigation will allow.⁷ Indeed, by suspending every LNP query service and end-user surcharge tariff filed to date, the Commission implicitly has recognized that suspension is appropriate to ensure that any LNP query charges or end-user surcharges comply with its new cost recovery rules.

⁵ 47 U.S.C. § 204(a)(1) makes plain that the ILECs bear the burden of proving the lawfulness of their tariff filings.

⁶ LNP Cost Classification Order, ¶ 19.

⁷ The importance of such review is heightened because, under the Commission's current interpretation of § 402 of the 1996 Act, if the instant tariffs are not suspended carriers taking service pursuant to the tariff will have no effective right to damages in the event the instant filings later prove inconsistent with the Commission's orders. See Report and Order, Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, CC Docket No. 96-187, FCC 97-23 (released January 31, 1997) ¶¶ 18-23.

I. Ameritech and GTE Fail to Comply with the Commission's Requirements Concerning Recovery of OSS Costs.

Even the brief review AT&T was permitted prior to filing this petition makes plain that the ILEC tariffs at issue should be suspended or rejected. In perhaps the most glaring example, Ameritech openly admits that it does not comply with the LNP Cost Classification Order. Page 5 of Ameritech's D&J states:

As detailed in Ameritech's Petition for Clarification or Review ... incremental costs of providing LNP include those required to pre-order, order, provision, repair and maintain and bill for LNP. It also includes costs of upgrading the 9-1-1 database to retain ported number listing data.

In short, Ameritech's filing complies not with the LNP Cost Classification Order, but with requirements that Ameritech's petition for review of that order argues the Commission should have adopted, as the order makes plain:

The Commission specifically rejected the proposition that eligible LNP costs include all costs that carriers incur as an "incidental consequence of number portability." For this reason, in submitting their tariffs, we require LECs to distinguish clearly costs incurred for narrowly defined portability functions from costs incurred to adapt other systems to implement LNP, such as repair and maintenance, billing, or order processing systems.⁸

The Communications Act unequivocally provides that, absent a stay, the pendency of a petition for reconsideration does not limit a petitioner's obligation to comply with the order it challenges.⁹ Accordingly, Ameritech's tariff should be rejected.

GTE similarly seeks to force end-users and purchasers of its query services to bear the costs it purportedly incurred for changes to its internal systems for functions such as

⁸ LNP Cost Classification Order, ¶ 12; see generally id., ¶¶ 8-14.

⁹ 47 U.S.C. § 405.

ordering, billing and maintenance, as well as 911 systems,¹⁰ and its tariff should be rejected on that ground.

II. Ameritech, SWBT, And Pacific Impermissibly Seek To Recover Embedded Costs

Ameritech's states that it has "determined that it would not have to add [signaling] capacity to handle wholesale queries."¹¹ Despite this admission, however, page 7 of its D&J states that: "Additional capacity was determined by ascertaining the amount of new incremental traffic that will be added as a result of LNP during the five-year period, and by multiplying that number by the average cost to support additional traffic on that system or network."

The LNP Cost Classification Order makes clear that ILECs may only recover the incremental costs generated by LNP, not some multiple of the "average costs" of their facilities.

[O]nly new costs can be claimed as eligible LNP costs. [A]n incumbent LEC's use of embedded facilities cannot give rise to costs directly related to LNP unless the incumbent LEC can show that the use of the facilities for the provision of LNP gave rise to new costs. ...[A]llowing incumbent LECs to claim embedded investments as eligible LNP costs would grant them double recovery.¹²

Ameritech may only recover its investment and ongoing expenses that it can show both (1) would not have been incurred "but for" its provision of LNP, and (2) actually were incurred "for the provision of" LNP.¹³ The LNP Cost Classification Order does not permit an ILEC to recover what it claims were its "average" pre-LNP expenses associated with embedded signaling and other systems. In addition, even if Ameritech's use of its "average cost" were otherwise proper

¹⁰ See GTE D&J, pp. 9-28.

¹¹ Ameritech, Appendix D, p. 4.

¹² LNP Cost Classification Order, ¶ 18.

¹³ See id., ¶ 10.

(as it is not), it simply propounds an "average cost" figure without providing cost support that would allow the Commission or commenters to even begin to verify its calculations.

Pacific and SWBT also calculated an average cost per query figure that they employed in both their surcharge and query rates.¹⁴ As in the case of Ameritech, that practice is directly contrary to the LNP Cost Classification Order's mandate that "LECs may recover through the federal LNP charges only those costs that are demonstrably incremental costs LECs incur in the provision of long-term number portability."¹⁵ For example, in calculating its surcharge rate, after Pacific calculated its claimed costs of LNP investments, installations and operating expenses, it then added its purported "cost of queries" for its own internal LNP querying -- its claimed average rate multiplied by the total number of internal queries it projects for the five-year recovery period. (Pacific Chart 2B). SWBT and Ameritech improperly increased their claimed costs in similar fashion. In addition, like Ameritech, neither Pacific nor SWBT provides any support for its calculations of its own "average cost" to conduct queries, thus making it impossible to evaluate the validity of their assumptions, even apart from their failure to claim only incremental costs.

III. SWBT, Pacific And GTE Impermissibly Attempt To Recover Seven Years Of LNP Expenses

Paragraph 51 of the LNP Cost Classification Order provides that "Costs for end-user charges should be amortized over the five-year recovery period. We note that costs, such as

¹⁴ See, e.g., Pacific Charts 2B - 5B; SWBT, Appendix B, p. 2 ("All of SWBT's costs of launching, transporting and processing queries, including LNP queries ... are identified through the use of models which recognize that unit costs are reflective of the advancement of the next capacity addition....").

¹⁵ LNP Cost Classification Order, ¶ 21.

maintenance, to be incurred after the five-year recovery period may not be included in eligible end-user costs." Pacific and SWBT, however, calculated their costs based on the years 1997 through 2003 -- seven years, rather than five. Pacific increases its over-recovery by adding an 11.25% annual cost of money to its claimed expenditures for 1997 and 1998.¹⁶ In addition, its tariff seeks <REDACTED> in purported unrecovered "costs" for internal queries Pacific has performed during 1997 and 1998, when surcharges could not be levied, a figure it calculates using the impermissible "average cost" of querying in its network described in Section II, above.¹⁷ SWBT seeks to recover <REDACTED> for internal queries performed in 1997 and 1998, based on similar claims regarding its internal "cost" to complete queries on its own traffic during that period.

GTE also calculated its total investment and expenses based on the years 1997- through 2003, and also compounds this error by claiming that its investments for the years 1997 to 1999 should be adjusted to reflect its cost of capital. (GTE Chart 2A).

IV. The Commission's LNP Orders Prohibit Charges For Queries Unless A Call Terminates To An End Office From Which At Least One Number Has Been Ported

In the instant tariff filings, Pacific and SWBT once again seek to force other carriers to purchase utterly unnecessary LNP queries by tariffing an LNP query charge that would apply to every call delivered unqueried to an NXX in which LNP was available, without regard to whether even a single number had in fact been ported in that NXX. This issue was a

¹⁶ See Pacific D&J, p. 11 ("Implementation expenses which were incurred during 1997 and 1998 and which are to be recovered during the five-year implementation recovery period beginning February 1, 1999 reflect the funding required by Pacific to carry those expenses at the discount rate associated with the 11.25% cost of money.")

¹⁷ See Pacific Chart 2B.

major point of contention in prior LNP tariff investigations, but it has yet to be resolved. AT&T has responded at length to these ILECs' claims concerning this issue in prior proceedings, and has attached its prior pleadings and ex parte submissions as Exhibit 1 to the instant petition.¹⁸ As AT&T has previously demonstrated, nothing in the Commission's LNP orders or regulations either requires or permits an ILEC to charge for "default" queries before the first number ports in an NXX. Indeed, the majority of ILECs that have filed LNP query tariffs do not intend to charge for queries in that circumstance -- a fact that obliterates any claim that SWBT's and Pacific's plan is a matter of technical necessity or accepted industry practice. At bottom, SWBT and Pacific argue that they can require carriers to pay for a bogus "service" in which those ILECs perform LNP queries for no valid purpose whatsoever. Neither the Commission's rules nor simple logic permit that result.

SWBT's and Pacific's instant tariff filings also fail to comply with the LNP Cost Classification Order's command that LECs that intend to "perform[] queries for all calls even in NXXs where no telephone number has been ported" must "explain why it is necessary to query all calls in this situation."¹⁹ The sole explanation these ILECs offer for their attempt to query all calls to LNP-capable NXXs is contained in a half-page of text in Appendix C to each of their filings. This meager showing is plainly insufficient -- particularly in light of AT&T's showing to the contrary.

¹⁸ Exhibit 1 to the instant petition is AT&T's most recent pleading concerning this issue, which also collects AT&T's prior submissions on this subject. AT&T Corp. Opposition to Direct Cases, Number Portability Query Services, CC Docket No. 98-14, filed July 10, 1998, pp. 23-31 and Exhibits 1, 3 & 4 thereto.

¹⁹ LNP Cost Classification Order, ¶ 48.

V. Pacific And SWBT Fail To Justify Their Proposed Non-Recurring Charges

As they have in their prior LNP tariff filings, SWBT and Pacific seek to tariff wholly unjustifiable non-recurring charges. Although the Commission expressly designated those ILECs' non-recurring charges as issues to be considered in its prior LNP tariff investigation, it has yet to resolve whether such charges are proper.

Pacific proposes to charge \$235 per bill rendered, per customer,²⁰ while SWBT would levy a \$214.50 fee per bill, per customer.²¹ Neither SWBT nor Pacific adequately explained in this or their prior tariff filings why they must impose these extraordinarily high charges each time they process a bill for a default query charge,²² and they fail to do so in the instant tariffs as well. All or virtually all customers of an ILEC's "default query" services also will be purchasing exchange access from that ILEC on a regular basis in order to terminate interexchange calls in its territory. Thus, in most cases SWBT and Pacific already will have established an account with those carriers, and accordingly should not need to impose any non-recurring charges relating to billing.

In all events, there is no basis to impose this so-called "nonrecurring" charge on a monthly basis. After a carrier has been billed during one month for default LNP query service, SWBT and Pacific cannot plausibly contend that they must set up billing from scratch in each subsequent month. AT&T submits that it should be dispositive to the Commission's analysis of

²⁰ See Pacific Transmittal No. 2029, at 13.3.16(D)(1)(c)(ii) & 13.3.16(E)(7).

²¹ SWBT Transmittal No. 2745, at 134.4.2(B) & 34.5.5.

²² See Order Designating Issues For Investigation, Number Portability Query Services, CC Docket No. 98-14 (released June 17, 1998) ("Pacific Bell and Southwestern Bell have not explained why their 'non-recurring' billing charges need to be applied each month to default carriers, and have not adequately justified the level of this charge.").

this issue that other ILECs have not proposed similar non-recurring charges -- indeed, Ameritech eliminated a similar charge from its tariff during a previous LNP query tariff investigation, observing that it had identified "ways to mechanically identify and bill for default traffic."²³

VI. Other Flaws In The LNP Tariffs Also Warrant Their Rejection Or Suspension

AT&T's brief review of the LNP tariffs before the Commission in this proceeding also has revealed a variety of other flaws in those filings. Such obvious errors and omissions in the course of "streamlined" review counsel strongly in favor of the closer scrutiny possible in a full investigation.

A. Ameritech

Exhibits 1 and 2 of Ameritech's filing show that <REDACTED> of its database rate and <REDACTED> of the query rate consist simply of "Other Direct Expenses." Page 9 of Ameritech's D&J identifies the source of this information only as the "LNP Cost Tracking System." Ameritech does not provide information to validate this "System," in direct contravention of the LNP Cost Classification Order.²⁴

Also, page 17 of Ameritech's Chart 1 provides expected end user volumes, broken out by retail lines, resale lines, and unbundled switch ports. In years 2001-2003, the sum of

²³ Reply Comments of Ameritech, Number Portability Query Services, CC Docket No. 98-14, filed February 27, 1998, p. 14.

²⁴ LNP Cost Classification Order, ¶ 56 ("[W]e require LECs to disclose computer-cost models on the record, if they use such models to justify rates. We note that, in the past, the use of computer cost models has generated significant controversy. The burden, therefore, rests on the incumbent LEC to explain fully all of the inputs, algorithms and assumptions of its computer-cost model.").

these is captured in the line "Grand Total." However, in years 1999-2000 the charts show the following data:

	1999	2000
Total Retail Lines	<REDACTED>	<REDACTED>
Total Resale Lines	<REDACTED>	<REDACTED>
Unbundled Ports	<REDACTED>	<REDACTED>
Grand Total	<REDACTED>	<REDACTED>

This arithmetic error reduces the total lines over which Ameritech spreads its query charges by approximately 5%.

B. CBT

CBT simply provides no meaningful support for its proposed rates, despite the LNP Cost Classification Order's repeated admonitions that ILECs filing LNP tariffs bear the burden of proof and should supply the Commission with detailed cost support and other data. Moreover, although the Procedural Order expressly directed ILECs "to serve their complete tariffs, including accompanying cost studies" upon all persons that filed replies in the LNP Cost Classification proceeding, CBT did not serve AT&T. Although CBT's designated representative did confirm, in response to AT&T's inquiry, that CBT did not seek confidential treatment of any portion of its tariff filing, CBT did not respond to AT&T's request for whatever cost support (if any) was not available on the Commission's Electronic Tariff Filing System. Thus, to the extent CBT may have provided cost support in addition to that available on ETFS, other parties have been denied a meaningful opportunity to comment on that material.

C. GTE

GTE applied all of its capital cost factors against the total NPV of its claimed investment in LNP. (GTE Chart 2B). The Commission's LNP Cost Recovery Order clearly

held, however, that "carriers' unrecovered capital investment will be subject to an 11.25 percent return."²⁵ The effect of this error is to over-recover approximately \$2 to 3 million per year.

D. SWBT and Pacific

SWBT's Chart 1 states that its total end office / tandem operating expenses for the five-year recovery period is <REDACTED>, and that its total OSS charges were <REDACTED> for that same period. SWBT's chart 2A states that the total of these two charges (<REDACTED>) applies to its end user surcharge. However, SWBT's Chart 2B includes the five-year total <REDACTED> operating expense for each year. This error results in approximately <REDACTED> in excess costs.

Finally, Pacific proposes to use a <REDACTED> overhead factor, which it states is the rate established in a California state proceeding.²⁶ While this proposal is a significant improvement over the more than 54% in additive factors Pacific proposed in its previous LNP tariff,²⁷ it is markedly higher than those used by the other ILECs participating in this proceeding -- and far greater than the <REDACTED> overhead factor Ameritech employs. AT&T strongly supports the LNP Cost Classification Order's decision to use the overhead allocation factors set by state commissions for unbundled network elements as a guide in "reviewing the reasonableness of incremental overhead allocations."²⁸ The Commission did not hold, however,

²⁵ Third Report and Order, Telephone Number Portability, CC Docket No. 95-116, FCC 98-82 (released May 12, 1998), ¶ 144 (emphasis added).

²⁶ See Pacific, Charts 2B, 3B, 4B and 5B. The data underlying the state proceedings to which Pacific adverts are proprietary to that company. Accordingly, AT&T did not have access to those figures in preparing its petition.

²⁷ See AT&T Corp. Reply Comments, Telephone Number Portability Cost Classification Proceeding, CC Docket No. 95-116, RM 8535, filed September 16, 1998, at AT&T Exhibit 1, p. 1.

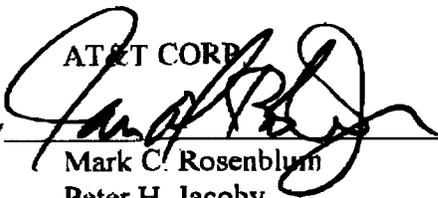
²⁸ LNP Cost Classification Order, ¶ 36.

that it would be bound by the results of such proceedings, but merely that they serve as "a useful check on the reasonableness of ... incremental overhead allocations."²⁹ Indeed, it would be unreasonable to permit one ILEC to establish a significantly higher overhead rate for its LNP tariff than that employed by other ILECs, absent a compelling showing by that ILEC that its incremental overhead costs of implementing portability were in fact higher than those of other ILECs.

CONCLUSION

For the reasons stated above, AT&T urges the Commission to reject or, alternatively, to suspend and investigate the tariff filings at issue in this proceeding.

Respectfully submitted,

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January 21, 1999

²⁹ Id., ¶ 37.

Exhibit 1

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	
)	
Number Portability Query Services)	CC Docket No. 98-14
)	
Ameritech Tariff F.C.C. No. 2, Transmittal No. 1149, as Amended)	CCB/CPD 98-26
)	
Bell Atlantic Tariff F.C.C. No. 1, Transmittal No. 1041)	CCB/CPD 98-25
)	
Pacific Bell Tariff F.C.C. No. 128, Transmittal Nos. 1927 and 1973)	CCB/CPD 98-23
)	
Southwestern Bell Tariff F.C.C. No. 73, Transmittal Nos. 2638 and 2694;)	CCB/CPD 98-17
)	

OPPOSITION TO DIRECT CASES

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SUMMARY

This proceeding is the second investigation of proposed BOC LNP query tariffs, and the second time the BOCs have refused the Commission's express demand that they provide adequate evidence to satisfy their burden of proof under 47 U.S.C. § 204. The direct cases present cursory, narrative descriptions of the data and assumptions underlying the tariffs -- and in many cases completely ignore issues that the Designation Order required them to address. In light of their patent inadequacy, both the Communications Act and Commission precedent require that all of the proposed tariffs be held unlawful.

Given the abject insufficiency of the instant tariffs, AT&T's opposition does not (and need not) attempt to point out all of the failings of the BOCs' transmittals nor to rebut all of the contentions in their direct cases. However, in order to help all parties move forward with LNP implementation, the Commission should decide the outstanding questions concerning LNP query service that AT&T addresses in this pleading. The majority of these questions also arose in the prior LNP query tariff investigation, and all of them are certain to emerge in any future proceeding concerning this service if they are not disposed of here. Given that these issues will have been thoroughly briefed (in most cases twice over), AT&T strongly urges the Commission to resolve them in the instant proceeding, rather than deferring them to a later tariff investigation.

As the Designation Order found, the proposed tariffs have included general overhead loading factors, in contravention of the Commission's LNP Cost Recovery Order. In addition, the BOCs offer grossly inadequate information concerning their calculation of overhead factors, and the factors they employ appear to be significantly inflated.

The BOCs also fail to provide meaningful data to justify the costs they attribute to LNP query service, and seek to recover costs that are not directly related to LNP, in violation of the Cost Recovery Order. Further, the proposed tariffs allocate portions of embedded investment to LNP query service, a practice that both violates the Commission's LNP cost recovery requirements and attempts to double-recover for costs that are already fully recovered through existing services.

Like the vast bulk of the proposed tariffs, the BOCs' query demand forecasts are not adequately supported. In addition, SBC and Bell Atlantic inflate their demand figures by seeking to charge for intraoffice queries, as well as for queries on calls to NXXs in which no numbers have ported.

Pacific and SWBT offer only the vaguest generalities to support their wildly inflated nonrecurring charges for default queries. There is no basis for these charges, as is confirmed by Ameritech's decision to withdraw similar nonrecurring charges in the prior LNP query tariff investigation, on the ground that it had identified ways to automate the billing processes that Pacific and SWBT assert will require a large (but unspecified) amount of manual intervention.

In this proceeding Ameritech again seeks to require its direct competitors to provide it with detailed forecasts of their call volumes, and again proposes to block prearranged as well as default queries. Its direct case adds no meaningful new data to its previous, inadequate claims. No other carrier that has filed an LNP query tariff has sought to impose similar requirements. Ameritech thus must argue that it alone recognizes the purportedly grave threat LNP poses to network reliability in the absence of detailed demand forecasting. It cannot carry this immense burden.

Finally, Bell Atlantic and SBC continue their quest to force other carriers to purchase utterly unnecessary LNP queries by tariffing an LNP query charge that would apply to every call delivered unqueried to an NXX in which LNP was available, without regard to whether any numbers have been ported in that NXX. Neither SBC nor Bell Atlantic, however, can explain away the indisputable fact that their proposed tariff would require queries to be performed for no valid purpose -- and would charge carriers a fee for this bogus "service." Such a result cannot possibly comport with the "just and reasonable" standard of § 204 -- and it does not comport with the Commission's prior orders and rules governing LNP. Although both SBC and Bell Atlantic assert that they cannot implement LNP without charging for queries that even they admit are useless, Ameritech has irrefutably rebutted this claim by confirming that it will do just that.

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

In the Matter of)	
Number Portability Query Services)	CC Docket No. 98-14
Ameritech Tariff F.C.C. No. 2, Transmittal No. 1149, as Amended)	CCB/CPD 98-26
Bell Atlantic Tariff F.C.C. No. 1, Transmittal No. 1041)	CCB/CPD 98-25
Pacific Bell Tariff F.C.C. No. 128, Transmittal Nos. 1927 and 1973)	CCB/CPD 98-23
Southwestern Bell Tariff F.C.C. No. 73, Transmittal Nos. 2638 and 2694;)	CCB/CPD 98-17

OPPOSITION TO DIRECT CASES

Pursuant to the January 30, 1998 Order Designating Issues For Investigation ("Designation Order"),¹ AT&T Corp. ("AT&T") hereby opposes the direct cases filed by Ameritech , Bell Atlantic, Southwestern Bell ("SWBT"), and Pacific Bell ("Pacific")² concerning the lawfulness of their long-term number portability query service ("LNP query service") tariff filings. The BOCs have failed -- as they failed in the investigation of their previous LNP query

¹ Order Designating Issues For Investigation, Number Portability Query Services, CC Docket No. 98-14 (released June 17, 1998) ("Designation Order").

² Because SWBT and Pacific filed their direct cases jointly, this opposition will refer to those BOCs collectively as "SBC," their parent holding company.

service tariffs -- even to make a serious effort to carry their burden of proof in this proceeding. In light of the BOCs' continued refusal to accede to the Commission's clear and repeated directives to provide adequate cost support for their LNP query tariffs, neither the Commission nor commenters can make a reasoned determination that their proposed rates are just and reasonable. Accordingly, both the Communications Act and Commission precedent clearly require that all of the proposed tariffs be held unlawful.

Given the abject insufficiency of the instant tariffs, AT&T's opposition will not (and need not) attempt to point out all of the failings of the BOCs' transmittals nor to rebut all of the contentions in their direct cases, but will focus on certain critical issues. In addition, the instant tariffs have failed to correct many of the deficiencies found by the Commission and commenters in the previous LNP query tariff investigation. AT&T will not burden the Commission by repeating the arguments it made in that proceeding, but instead has attached its opposition to the BOCs' direct cases in that investigation as Exhibit 1 to this pleading, and incorporates that document herein by reference.³

³ AT&T, Opposition to Direct Cases, filed February 20, 1998, pp. 16-18, in Number Portability Query Services, CC Docket No. 98-14 (attached as Exhibit 1).

In order to help all parties move forward with LNP implementation, the Commission should decide the outstanding questions concerning LNP query service that AT&T addresses in this pleading in addition to declaring the proposed tariffs unlawful. The majority of these questions also arose in the prior LNP query tariff investigation, and all of them are certain to emerge in any future proceeding concerning this service if they are not disposed of here. Given that these issues will have been thoroughly briefed (in most cases twice over), AT&T strongly urges the Commission to resolve them in the instant proceeding, rather than deferring them to a later tariff investigation.

I. THE BOCs PLAINLY HAVE FAILED TO MEET THEIR BURDEN OF PROOF

This proceeding is the second investigation of proposed BOC LNP query tariffs, and the second time the BOCs have flatly refused the Commission's express demand that they provide adequate evidence to satisfy their burden of proof under 47 U.S.C. § 204. In suspending the BOCs' previous LNP query tariffs, the Commission made clear that those carriers had failed to provide adequate information to support their proposed charges, and directed them to provide such support in their direct cases.⁴ Despite this mandate, however, the BOCs made virtually no effort to justify their tariffs, leading the Commission to admonish in its order terminating that investigation that:

⁴ See, e.g., Memorandum Opinion and Order, Petition Of Ameritech To Establish A New Access Tariff Service And Rate Elements Pursuant To Part 69 Of The Commission's Rules, CCB/CPD 97-46, released October 30, 1997, ¶ 18 ("Ameritech and Bell Atlantic have not provided sufficient cost justification and other support to demonstrate the reasonableness of the proposed charges and rate structures.").

We take this opportunity to remind carriers that the burden to justify their proposed rates subject to investigation rests with them. Rather than provide the Commission and interested parties with sufficient data to evaluate the components and reasonableness of their charges, the carriers provided conclusory rates and brief narratives describing their methodologies. They did not provide sufficient information demonstrating the calculations they made to derive those rates.⁵

Despite the Commission's clear directives in the LNP Tariff Termination Order, the Designation Order finds the BOCs' current LNP query tariffs are also inadequate in many respects, and once again reminds those carriers of their obligations under the Communications Act.

In order to meet their burden under Section 204(a)(1) of the Act to show the reasonableness of the proposed charges, carriers must fully show the assumptions, methodologies, allocations, and specific costs supporting their proposed query service charges. Carriers in their Direct Cases must identify each cost proposed to be recovered, explain why it is a direct cost of providing number portability query service, and explain the methodology by which any portion of a joint or common cost is allocated to query service charges. All investments that are included in the direct cost of providing number portability must be clearly identified and explained. Carriers should state any assumptions they make regarding any portion of the query cost calculation including, but not limited to, assumptions about depreciation, cost of capital, and taxes.⁶

The Commission thus has made it abundantly clear, in two separate proceedings, what it requires from the BOCs in order to support their proposed LNP query tariffs. In spite of these directives, the direct cases once again present cursory, narrative descriptions of the data and

⁵ Tariff Investigation and Termination Order, Number Portability Query Services, CC Docket No. 98-14 (released March 30, 1998), ¶ 14 ("LNP Tariff Termination Order"). Pacific and SWBT withdrew their prior LNP query tariffs on the day that their direct cases were to have been due, while Bell Atlantic withdrew its prior tariff one week before the LNP Tariff Termination Order issued. That order held that Ameritech's prior tariff was unlawful on the grounds that Ameritech failed to make a sufficient showing to support it.

⁶ Designation Order, ¶ 10 (emphasis added).

assumptions underlying the tariffs -- and in many cases completely ignore issues that the Designation Order required them to address. Bell Atlantic's direct case, for example, is a mere 10 pages long, without a single supporting exhibit. Ameritech similarly fails to provide any new data in its direct case, instead attaching copies of its tariff and its filings in the Commission's previous LNP tariff investigation. Incredibly, Ameritech asserts (p. 1) that it responded to most of the Designation Order's requirements in its pleadings in the prior LNP query tariff investigation. The Commission itself provided an unequivocal rejoinder to this claim in the LNP Tariff Termination Order: "We find unlawful the tariff revisions contained in Ameritech Transmittal Nos. 1123 and 1130 because Ameritech failed to make a sufficient cost showing to justify the proposed rates."⁷

The BOCs also repeatedly attempt to argue that they may simply rely on materials presented in their tariff filings, despite the fact that the Designation Order (as well as the orders suspending each of the tariffs at issue) expressly found that those transmittals were not adequately justified. For example, SWBT asserts (p. 7) that its tariff's Description and Justification ("D&J") adequately explains its methodology for calculating overhead, although paragraph 6 of the Designation Order finds that it (and all of the other BOCs) included overhead loading factors that are prohibited by the LNP Cost Recovery Order.⁸

Ameritech also attempts to argue (p. 11) that its tariff filing provides sufficient detail regarding the methodology and assumptions it used to calculate its query service rates.

⁷ LNP Tariff Termination Order, ¶ 1.

⁸ Third Report and Order, Telephone Number Portability, CC Docket No. 95-116, FCC 98-82, released May 12, 1998 ("Cost Recovery Order").

This claim is facially untenable, as the Commission expressly designated as an issue for this investigation "whether the carriers' methodologies and assumptions used to develop their proposed rates are reasonable."⁹ Even apart from this fact, Ameritech's reliance on its tariff filing is insupportable. Ameritech calculates its total cost per query, before adding overheads, as \$.002948.¹⁰ However, fully 90% of this cost (\$.002652) is listed simply as "Other Direct Expenses." Ameritech's D&J (p. 5) offers a list of certain "cost elements" it claims are "associated with LNP Query Service," but Ameritech nowhere breaks out the specific costs of these elements, instead simply offering brief narrative descriptions of them. In light of the fact that, as the Designation Order noted (§ 10), Ameritech's per query charges are 3.6 times higher than SBC's, the stark lack of detail in Ameritech's filing is particularly damning.

The Commission's precedents clearly establish that a party's failure to adequately justify its tariff filing render that tariff unlawful.¹¹ In a ruling last year that is squarely on all fours with the instant investigation, the Commission rejected several tariffs on the grounds that the LECs filing them had refused to comply with its designation order's requirements that they provide additional cost support and explain their methodologies:

LECs that filed a physical collocation tariff generally failed to provide adequate support for their overhead loading factors. Partly as a result of the LECs' failure to explain and justify their overhead loading factors, the Bureau suspended and initiated an investigation into the LECs' physical collocation tariffs.

⁹ Designation Order, § 9.

¹⁰ Ameritech, Amended Transmittal No. 1149, April 1, 1998, Exhibit 1.

¹¹ See, e.g., LNP Tariff Termination Order, § 13, n.46 (citing prior Commission decisions holding that failure to provide adequate supporting data renders tariff filing unlawful).

LECs that were required to provide physical collocation were given another opportunity to justify their overhead loading factors when they filed their direct cases in response to the Bureau's Designation Order. In that order, the Bureau directed the LECs to explain how they developed their overhead loading factors.... In response to the Designation Order, all LECs, including BellSouth, filed direct cases that failed to include all the information requested by the Bureau. Hence, despite repeated directions from the Bureau that LECs provide cost support and explanations for their overheads, the LECs failed to submit adequate cost justification for their high levels of overhead loadings....

Based on the current record, the LECs have failed to meet their burden of proof under Section 204(a) of justifying their proposed overhead loadings.... Accordingly, based on the current record, we must find the LECs' originally filed rates for expanded interconnection to be unlawful.¹²

The BOCs themselves concede that their tariff filings do not comply with the Commission's requirements. Bell Atlantic candidly admits on the first page of its direct case that "Bell Atlantic's tariff does not follow the rules that were prescribed after the tariff went into effect" -- that is, the regulations prescribed in the Cost Recovery Order. That admission alone is fatal to Bell Atlantic's tariff, even apart from its other deficiencies. Ameritech confesses (pp. 2-3) that "Some of the cost or demand numbers supporting the Query Service are not supported by a cost study that fully meets the Commission's latest requirements," thereby also conceding that its transmittal is unlawful.¹³ SBC also effectively admits that its tariff does not meet the

¹² Second Report and Order, Local Exchange Carriers' Rates, Terms, And Conditions For Expanded Interconnection Through Physical Collocation For Special Access And Switched Transport, 12 FCC Rcd. 18730 (released June 13, 1997), ¶¶ 405-07.

¹³ Ameritech argues, however, (p. 2) that the Commission should simply leave its LNP tariff in place until it opts to file revised cost support sometime "much later this year." The Commission should reject this proposal outright. Section 204(a)(2)(A) of the Communications Act requires the Commission to resolve this investigation within five months after the date the LNP query tariffs take effect. After that time, the BOCs are likely to contend that the Commission no longer has the power to continue in effect the accounting order established for this proceeding or to order retroactive adjustments to the

(footnote continued on next page)

Commission's requirements by devoting a substantial portion of its direct case (pp. 4-9) to defending its own treatment of overhead costs -- and attacking the Cost Recovery Order's treatment of overhead factors as "economically inappropriate."¹⁴

The BOCs also argue at several points that because other entities will also be providing LNP query services, they should be permitted to tariff whatever rates they wish.¹⁵ As a preliminary matter, it is not clear that there will in fact be an alternative to the incumbent LEC in all cases in which competing carriers may want or need to purchase LNP query service. More importantly, the Commission already has determined that it is appropriate to require ILEC monopolists to tariff LNP query services at cost-based rates,¹⁶ and the BOCs' attacks on that

(footnote continued from previous page)

tariffed LNP query rates, even if those charges are unreasonable or are contrary to its cost recovery rules. Such a result would be both irrational and unjust, as it would deprive carriers that must purchase LNP query services from the instant tariffs of all legal remedies against overcharges. To prevent that result, the Commission should reject the tariffs under investigation in this proceeding and order the BOCs to re-file new LNP query service tariffs.

¹⁴ Even if SBC's argument were not otherwise without merit, it is plainly irrelevant to the instant tariff investigation. SBC is, of course, free to seek reconsideration of the Cost Recovery Order -- but it may not do so in this proceeding. In all events, given that the Commission received literally hundreds of comments, replies, and ex parte filings on the subject of LNP cost recovery, it is difficult to imagine what arguments SBC could present on reconsideration that were not, or could not have been, previously offered on this subject.

¹⁵ See, e.g., SBC, p. 3.

¹⁶ See, e.g., Cost Recovery Order, ¶ 9.

decision have no bearing on the instant proceeding.¹⁷

II. THE PROPOSED TARIFFS INCLUDE IMPERMISSIBLE OVERHEAD LOADING FACTORS

The recent Cost Recovery Order expressly prohibited the use of general overhead factors in calculating LNP costs.

Because carrier-specific costs directly related to providing number portability only include costs carriers incur specifically in the provision of number portability, carriers may not use general overhead loading factors in calculating such costs. Carriers already allocate general overhead costs to their rates for other services, and allowing general overhead loading factors for long-term number portability might lead to double recovery. Instead, carriers may identify as carrier-specific costs directly related to providing long-term number portability only those incremental overheads that they can demonstrate they incurred specifically in the provision of long-term number portability.¹⁸

However, as the Designation Order found (¶ 6), "[i]n the cost justification for their proposed tariffs, Ameritech, Bell Atlantic, Pacific Bell, and Southwestern Bell have included general overhead loading factors." The BOCs do not, and cannot, refute this finding.

Bell Atlantic frankly admits (p. 2) that it "included general overhead factors in calculating its costs," and in defense offers only the bare assertion that because it filed its tariff before the Commission issued the Cost Recovery Order, it should not be required to refund any overcharges to its LNP query service customers, even though its tariff is therefore unlawful. It is hardly surprising that Bell Atlantic cites no authority of any kind for this proposition, which is as

¹⁷ It is, moreover, ironic that the BOCs argue both that the market for query services is competitive and that they are permitted unilaterally to force other carriers to purchase unnecessary queries by charging for that entirely superfluous "service" on all calls to NXXs in which portability is available, even if no number has in fact been ported in that NXX. See infra Section VII.

¹⁸ Cost Recovery Order, ¶ 73 (emphasis added).

novel as it is unjust. Furthermore, the Commission's order suspending Bell Atlantic's current query tariff recognized that the LNP cost recovery proceeding was then ongoing, and stated unequivocally that the tariff "will be subject to any decisions of the Commission in that proceeding."¹⁹

Not only did Bell Atlantic utilize an impermissible general overhead factor, it appears to have used an unreasonably large -- and completely unsupported -- factor as well. That BOC responds (p. 4) to the Commission's requirement that it explain its rate "markups"²⁰ only by asserting (without support) that its figures "are in the reasonable range" and are "consistent with rates in other tariffs" (which it does not identify). Bell Atlantic's tariff states that the difference between its costs to provide tandem queries and its rate for that service is 31%, while the difference between its end office query costs and that rate is 54%. However, prior to adding these markups, Bell Atlantic calculated a purported unit cost which included their costs of investment (depreciation, cost of money, income tax, maintenance, RTU, administration, ad valorem tax and "other"), local transport and direct expenses. Bell Atlantic then went on to add its unsupported 54% and 31% markups, which appear to represent pure profit.

Like Bell Atlantic, Ameritech does not contend that its rates reflect its incremental costs of providing LNP query service, arguing only that its "overhead factor provides a reasonable estimate of average overhead costs until actual incremental costs are determined," and stating that

¹⁹ Memorandum Opinion and Order, Bell Atlantic Tariff F.C.C. No. 1, Transmittal No. 1041, CCB/CPD 98-25, DA 98-686 (released April 9, 1998), ¶ 8.

²⁰ See Designation Order, ¶ 9.

it will provide further cost support in its August comments in the LNP cost recovery proceeding.²¹ Ameritech also continues to claim that it did not use fully distributed costs ("FDC"), but this assertion is baseless. Ameritech states that it used historical costs from 1996 ARMIS reports to grow its (completely unsupported) direct unit cost annual cost factor. Essentially, Ameritech's methodology results in an overhead factor that mirrors historical fully distributed costs for 1996. If anything, this factor will be overstated because, among other reasons, Ameritech's overall costs have almost certainly been trending downward since 1996, and because its calculations use total direct and indirect costs to build its FDC factor. This factor therefore includes expenses that are neither incurred in, nor incremental to, providing LNP query functions (e.g., marketing costs).

As noted above, SBC's approach to the overhead issue (pp. 4-9) is simply to ignore the requirements of the Designation Order and instead attack the Cost Recovery Order's holding that ILECs may not use general overhead factors in calculating their LNP query charges. However, as shown above, SBC's desire to rewrite the Cost Recovery Order is -- in addition to being without merit -- irrelevant to the instant tariff proceeding.

The information SBC does provide about its overhead calculations is grossly inadequate. SWBT first adverts (pp. 7-8) to its original tariff filing, which the Designation Order found to provide insufficient justification. That BOC then asserts -- without support of any kind -- that it is today underrecovering its general overhead costs and so must allocate a portion of those costs (which include expenses such as marketing and other costs completely unrelated to

²¹ Ameritech, p. 5 (emphasis added).

LNP) to its LNP query services. Pacific's (p. 8) arguments are, if anything, even more inadequate, as that BOC merely asserts in a single sentence that it followed an unspecified methodology that it previously employed in a proceeding before the California PUC.

III. THE PROPOSED TARIFFS SEEK TO RECOVER INVESTMENTS THAT ARE NOT DIRECTLY RELATED TO PROVIDING LNP QUERY SERVICES

Paragraph 7 of the Designation Order expressly directed the BOCs to provide specific and detailed information to support their allocation of costs to their query service charges:

Carriers have generally failed to show adequately that the costs they propose to recover in their query service charges are costs directly related to providing prearranged and default query services. For example, none of the carriers distinguished the OSS costs incurred directly for the provision of portability from those incurred to support other functions, such as maintenance or directory services. It is not clear how SS7 costs were allocated between portability services and other services. More generally, to the extent carriers propose to base charges on a portion of joint or common costs used to provide both number portability query services and other non-number portability services, carriers have failed to provide an adequate explanation of why the portion allocated to query services is reasonable or constitutes a direct cost of providing number portability query service.

On the issue of allocating investment costs, the BOCs once again fail even to shoulder, much less to carry, their burden of proof.

OSS Expenses. Bell Atlantic offers (p. 2) only anecdotal information about its OSS expenditures, expressly stating that the expenses it describes are provided only "[f]or example." Plainly, offering up a few "examples" cannot be squared with the Designation Order's requirement (§ 10) that "[a]ll investments that are included in the direct cost of providing number portability must be clearly identified and explained." Moreover, the "examples" Bell Atlantic provides of system costs it seeks to recover via its LNP query tariff include functions such as service order administration, network surveillance and monitoring, maintenance, and billing -- all

of which Bell Atlantic would have been required to build and maintain whether or not it provided LNP query services to other carriers.²²

Like Bell Atlantic, SBC (p. 17) attempts to include in its OSS expenditures ordering systems and other functions that are not necessary to provide LNP query services. SBC's Appendix A purports to list the OSS modifications for which it seeks to recover its costs, but nothing in that document or elsewhere in SBC's direct case gives the dollar impacts of those specific modifications, instead offering only narrative descriptions. It is also plain that many of the systems in SBC's Appendix A have nothing to do with providing LNP query service -- for example, the first systems listed in that document relate to maintenance of white pages listings.

Ameritech (p. 6) fails to provide any new information on OSSs, and instead merely refers to its initial tariff filing and states (with no support) that it included only direct costs in developing its LNP query rates.

SS7 Expenses. The BOCs also fail to provide sufficient detail concerning their allocation of SS7 investments. The information they do provide, however, only serves to further establish that their query tariffs are deeply flawed. Bell Atlantic states that it

utilized a model that developed the average unit per busy hour octet investment for each service that used the pre-existing SS7 network, allocating to each service a portion of the investment based on its usage of the network. To get its total SS7 number portability investment, Bell Atlantic added to this figure the amount of new SS7 investment that would be required to handle number portability signaling.²³

²² The Designation Order found (§ 7) that the BOCs "have generally failed to show adequately that the costs they propose to recover in their query service charges are costs directly related to providing prearranged and default query services."

²³ Bell Atlantic, p. 3 (emphasis added).

As a preliminary matter, Bell Atlantic does not provide the "model" to which it refers.

Accordingly, it is impossible for the Commission or commenters to evaluate it, and Bell Atlantic therefore has failed to carry its burden of proof under § 204.

Furthermore, the Designation Order (§ 8) specifically singled out Bell Atlantic's failure to explain its allocation of investment costs on the ground that it improperly included its embedded costs.

Bell Atlantic provides many worksheets, but has not explained them or shown that its calculations include only the costs of providing portability services. In particular, they include substantial amounts of "embedded network investment," the costs of which may be already recovered in other rates.

The above-quoted portion of Bell Atlantic's direct case confirms that it allocated a portion of its embedded SS7 investment to its LNP query service, and then added the purported incremental costs of its SS7 investments required for portability. Such an approach fails to comport with both the Cost Recovery Order and the Designation Order, and seeks to double-recover for Bell Atlantic's embedded investments. ILECs' investments in existing facilities are already being recovered through their current rates, as the Designation Order recognizes.²⁴ Accordingly, Bell Atlantic may not consider its embedded asset base in calculating its LNP query rates. In addition, the Cost Recovery Order prohibits ILECs from attributing the entire cost of new investments to

²⁴ See Designation Order, § 8 (Bell Atlantic "include[s] substantial amounts of 'embedded network investment,' the costs of which may be already recovered in other rates").

LNP if those investments also will support other services,²⁵ and Bell Atlantic has failed to demonstrate that it has properly identified and allocated its incremental costs to implement LNP.²⁶

As it did with its OSS costs, Ameritech (pp. 7-8) fails to provide the information required by the Designation Order, stating only that its SS7 costs were developed using a "model" that it does not provide, and that it describes only in passing. The information Ameritech does offer, however, makes clear that it also has attempted to recover embedded SS7 costs, as that BOC bases its cost information on the usage of its existing SS7 network to provide LNP, not on the incremental costs of any upgrades necessary to provide that service.²⁷

SBC provides only the vaguest generalities to support its SS7 investments. For example, although it states (p. 15) that SWBT's SS7 costs "are supported by various studies conducted by switch vendors," it fails to provide those studies -- or even to describe them in any meaningful way. SWBT similarly fails to offer any information about its purported internal analyses of its SS7 costs. Given the paucity of information SBC provides, it is simply impossible for either the Commission or commenters to determine the true size of SBC's SS7 investments.

Other Issues: The Designation Order (§ 9) expressly directed Bell Atlantic to explain why its end office query charge is roughly five times its tandem query rate. In response,

²⁵ Cost Recovery Order, § 73.

²⁶ See Designation Order, § 7 ("to the extent carriers propose to base charges on a portion of joint or common costs used to provide both number portability query services and other non-number portability services, carriers have failed to provide an adequate explanation of why the portion allocated to query services is reasonable or constitutes a direct cost of providing number portability query service").

²⁷ See Ameritech, pp. 7-8.

that BOC offers (pp. 4-5) no additional documentation of its development of these charges other than to state that it seeks to recover unspecified "additional switching and transport" -- costs which may well be sunk investments for purposes pricing LNP queries. In addition, while the largest single component of the difference between Bell Atlantic's end office and tandem query rates is transport costs, Ameritech stated in its reply in the Commission's previous LNP query tariff investigation that it "did not even consider transport costs in calculating its Query Service rates because, for the most part, those facilities are already in place."²⁸

In response to the Designation Order's requirement (§ 8) that it justify its proposal to allocate 15% of its alleged total LNP costs to LNP query services, SBC offers three arguments, all of which are meritless. First, SBC states (p. 11) that its initial tariff filing projected that 17.3% of queries would come from carriers other than itself. This point is a sheer non sequitur. Even accepting SBC's demand forecasts arguendo (although the Designation Order expressly holds (§ 11) that they have not been adequately justified), SBC provides no basis to assume that query demand can or should serve as a proxy for allocating total LNP costs to query services. Moreover, to the extent that query demand could serve that function, SBC's own calculations show that other carriers' queries represent 17.3% of its total query volume, not the 15% figure it actually employs.

Second, SBC asserts that AT&T previously has supported allocating 15% of LNP costs to IXC's, and cites a September 25, 1997 AT&T ex parte in support of that claim. This

²⁸ Reply Comments of Ameritech, filed February 27, 1998, p. 10 in Number Portability Query Services, CC Docket No. 98-14.

contention is, at best, extremely disingenuous. The ex parte letter SBC cites is attached to this pleading as Exhibit 2.²⁹ That document states only that if the Commission were to permit ILECs to recover their LNP costs through direct charges to other carriers (a result AT&T opposed and which the Cost Recovery Order rejected), then the separations process would dictate that approximately 15% of those costs be allocated to the interstate jurisdiction, with access charges serving as the only means available to recover those interstate charges. This point in no way supports SBC's contention that it should be permitted to allocate 15% of its purported LNP costs to query services without providing adequate support for that proposal.

Third, SBC makes the bizarre argument (p. 12) that the Commission has already "approved" an Ameritech LNP query tariff that contains the same 15% cost allocation. In fact, the Commission rejected Ameritech's prior LNP query tariff and is investigating Ameritech's most recent query tariff in the instant investigation.

IV. THE PROPOSED TARIFFS FAIL TO JUSTIFY THEIR QUERY DEMAND FORECASTS

Paragraph 11 of the Designation Order finds that the BOCs "present[ed] their [query demand] projections without adequately explaining how they were developed." In response, Bell Atlantic adverts (pp. 5-6) to the description of its methodology in its tariff filing (despite the Designation Order's finding that this description is inadequate), and offers a brief narrative unencumbered by any actual data. Bell Atlantic also states (p. 6, n.11) that its demand

²⁹ Letter from Frank S. Simone, Government Affairs Director, AT&T, to William F. Caton, Acting Secretary, Federal Communications Commission, September 25, 1997 (attached as Exhibit 2).

projections include "intraoffice queries." However, LRN-based portability does not require carriers to launch queries when a call terminates in the same end office from which it originates.³⁰

Thus, to the extent that Bell Atlantic included "intraoffice queries" in its demand forecast, it has either overestimated its demand figures, or else intends to charge other carriers for an even greater number of unnecessary queries than AT&T previously supposed. SBC also appears to include intraoffice calls in its demand estimates, as Appendix B to its direct case states that "Once an NXX is listed in the LERG as being portable, all call attempts to that NXX will be queried."³¹ Ameritech's direct case provides no meaningful new information as to its methodology for estimating its anticipated query volumes, but simply offers further narrative description.

To the extent that SBC and Bell Atlantic assume that they will query all calls to each NXX designated as portable, even before the first number ports in that NXX, they have significantly overstated their demand figures.³² Although these BOCs have attempted in the past to argue that reducing their demand projections will merely require them to spread the same costs of LNP query service over a smaller base of queries, thereby increasing the price of each query, this analysis is far too simplistic. First, because SBC's and Bell Atlantic's cost estimates are based on these inflated demand figures (e.g., their allocation of SS7 costs is keyed to their demand assumptions), their cost figures inevitably are inflated as well.

³⁰ See, e.g., Illinois Number Portability Workshop, Generic Switching and Signaling Requirements for Number Portability, Issue 1.05, August 1, 1997, Section 2.1.2.

³¹ SBC Appendix B, p. 1 (emphasis added).

³² See infra, Section VII.

Second, the claim that reducing query demand projections merely increases the per-query price necessarily concedes a crucial point. If performing queries only for calls to NXXs in which at least one number has been ported will not affect an ILEC's costs, then ILECs' protests that querying only such calls will be "inefficient" or "unnecessarily costly" cannot be taken seriously, as by their own reckoning any added burden will be so insubstantial that it will not cause any additional expense.³³

Third, Bell Atlantic's and SBC's proposal to perform unnecessary queries for every call delivered to a portable NXX very likely will affect not only the number of queries purchased by each carrier, but the identity of those customers as well. Carriers such as AT&T that intend to perform their own LNP queries may nevertheless need to purchase LNP query service from other carriers if they are temporarily unable to perform queries for technical reasons.³⁴ If ILECs nationwide were permitted to charge for LNP queries on all calls to NXXs designated as portable, an N-1 carrier that had designed its systems to comply with the different requirements established by the Commission's rules³⁵ might experience capacity and congestion problems until it could

³³ Compare Bell Atlantic, p. 8 ("it would be extremely inefficient and unnecessarily costly for Bell Atlantic" to query only NXXs in which at least one number has been ported) with id., p. 9 (if it queried only NXXs in which at least one number has been ported, "it is not clear to Bell Atlantic that the economic effect of this process would be any different from the existing process -- that the same carriers would not end up paying Bell Atlantic the same amount of money.") (emphasis added).

³⁴ Although AT&T will perform its own LNP queries for its wireline services, AT&T Wireless Services intends to purchase query services for some time following implementation of LNP.

³⁵ See infra, Section VII; Exhibit 1, pp. 7-9; Exhibit 3; Exhibit 4.

adjust to the sudden, tremendous volume of queries that it would be required to perform under SBC's and Bell Atlantic's version of LNP policy, and accordingly that N-1 carrier might be forced to purchase LNP query services that it could have self-provisioned under the rules established by the Commission.

V. PACIFIC AND SWBT FAIL TO JUSTIFY THEIR PROPOSED NON-RECURRING CHARGES

Paragraph 9 of the Designation Order found that "Pacific Bell and Southwestern Bell have not explained why their 'non-recurring' billing charges need to be applied each month to default carriers, and have not adequately justified the level of this charge." In addition, the order found (§ 9) that "Pacific also proposes substantial non-recurring charges for pre-arranged database services, but has not explained what costs are incurred nor adequately justified these rate levels. We note that no other carrier has proposed similar charges."

SWBT asserts (pp. 12-13) that it calculated its default billing charge by "obtain[ing] average work times from experienced subject matter experts" to perform three categories of generalized tasks: "investigat[ing]" default query usage, "contact[ing] the carrier, if necessary," and "set[ting] up" billing. This information is plainly inadequate to justify the charges in question. Neither SWBT's direct case nor its tariff filing state the specific times it allotted to each of the tasks it asserts result in its default billing charge, or the actual labor rates it used to derive those charges. Pacific (pp. 13-14) also fails to provide more than vague generalities underlying either of its nonrecurring charge types, offering for example that "Task occurrence factors (how frequently a task is performed) and work group occurrence factors (how frequently a work group is involved in an average service order) were developed." The actual figures

underlying its narrative description remain a mystery, and thus neither the Commission nor commenters can possibly verify Pacific's figures.

In addition, neither SWBT nor Pacific even attempts to explain why they must charge \$269.91 (Pacific) and \$351.56 (SWBT) each time they process a bill for a default query charge. All or virtually all customers of an ILEC's "default query" services will also be purchasing exchange access from that ILEC on a regular basis in order to terminate interexchange calls in its territory. SWBT and Pacific therefore in most cases already will have established an account with those carriers, and therefore should not need to impose any non-recurring charges relating to billing. In all events, there is no basis to impose this so-called "nonrecurring" charge on a monthly basis. After a carrier has been billed during one month for default LNP query service, SWBT and Pacific cannot plausibly contend that they must set up billing from scratch in each subsequent month. AT&T submits that it should be dispositive to the Commission's analysis of this issue that neither Ameritech nor Bell Atlantic proposes similar non-recurring charges -- indeed, Ameritech eliminated a similar charge from its tariff during the Commission's previous investigation, observing that it had identified "ways to mechanically identify and bill for default traffic."³⁶

VI. THE COMMISSION SHOULD REJECT AMERITECH'S PROPOSED BLOCKING STANDARDS AND INFORMATION DISCLOSURE REQUIREMENTS

Ameritech responds to the Designation Order's requirement (§12) that it provide additional support for its proposal to block prearranged traffic as well as default traffic first by

³⁶ See Reply Comments of Ameritech, filed February 27, 1998, p. 14 in Number Portability Query Services, CC Docket No. 98-14.

adverting yet again to the very tariff filing that the order found inadequate.³⁷ Ameritech then offers a brief explanation of its proposal that adds nothing substantial to its prior submissions on this subject. As AT&T showed in its comments on Ameritech's previous LNP query tariff, the Commission's LNP Second Report and Order³⁸ does not permit carriers to block prearranged queries.³⁹ Further, Ameritech does not -- and simply cannot -- explain why it, alone among the carriers that have filed LNP query tariffs, must block prearranged query traffic. This crucial fact makes plain that Ameritech's purported concern for network reliability is a sham.

Ameritech also provides a similarly insubstantial, discussion of its proposal to require carriers that seek to purchase its LNP query services to provide rolling, three-month estimates of the volume of traffic they intend to deliver to Ameritech end offices and tandem offices, including total monthly traffic, maximum busy hour volumes, and the Ameritech switch over which they intend to route this traffic.⁴⁰ Ameritech's case for this requirement founders at the outset on the same simple -- but fatal -- problem that afflicts its proposal to block prearranged query traffic: No other carrier that has filed an LNP query tariff has sought to impose a similar requirement. Ameritech thus must argue that it alone recognizes the purportedly grave threat LNP poses to network reliability in the absence of detailed demand forecasting. It cannot carry this immense burden.

³⁷ See Ameritech, pp. 11-12.

³⁸ Second Report and Order, Telephone Number Portability, 12 FCC Rcd. 12281.

³⁹ See Exhibit 1, pp. 16-18.

⁴⁰ See Designation Order, ¶ 13.

Ameritech's direct case merely states in a variety of ways that it believes it should be permitted to demand competitively sensitive data from its direct competitors. At bottom, Ameritech claims only that it believes it can better predict demand if it obtains detailed forecasts -- not that it must have those data (which no other carrier has sought) in order to provide query services. It is clear (and Ameritech does not dispute) that if competing carriers must provide Ameritech with forecasts of their anticipated call volumes on an end office-by-end office basis three months in advance, then Ameritech will easily be able to determine the areas its competitors plan to target with promotions or marketing campaigns. Ameritech has offered nothing that shows that it must have detailed demand forecasts in order to provide LNP query service. Accordingly, there is no basis to require CLECs to, in effect, give Ameritech advance notice before attempting to compete with that BOC within its local monopoly territory.

VII. THE COMMISSION'S LNP ORDERS PROHIBIT CHARGES FOR QUERIES UNLESS A CALL TERMINATES TO AN END OFFICE FROM WHICH AT LEAST ONE NUMBER HAS BEEN PORTED

In this proceeding Bell Atlantic and SBC continue their quest to force other carriers to purchase utterly unnecessary LNP queries by tariffing an LNP query charge that would apply to every call delivered unqueried to an NXX in which LNP was available, without regard to whether even a single number had in fact been ported in that NXX.⁴¹ AT&T responded to these arguments at length in two previous ex parte filings,⁴² which are attached to this opposition as

⁴¹ See Bell Atlantic, pp. 7-9; SBC, pp. 19-27. The Designation Order addresses this issue in ¶ 14.

⁴² Letter from Frank S. Simone, Government Affairs Director, AT&T, to A. Richard Metzger, Chief, Common Carrier Bureau, Federal Communications Commission, January

(footnote continued on next page)

Exhibits 3 and 4, and so will not repeat all of those contentions here. SBC's and Bell Atlantic's latest arguments boil down to two claims, both of which fail.

First, SBC offers the incredible assertion that the Commission has already decided this issue in its favor. In support of this absurd claim, SBC cites a single sentence from the "Background" section of the Cost Recovery Order,⁴³ in which the Commission did not even claim to address -- much less resolve -- the issue of charging for queries on calls to NXXs in which numbers have ported. The Commission's passing reference plainly was not intended to resolve this question. For one, the Commission has long been aware of the controversy surrounding this aspect of LNP queries, and cannot reasonably be presumed to have resolved it without so much as mentioning the competing arguments that have been offered by various parties in its LNP docket and in the prior LNP tariff investigation, because doing so would violate fundamental tenets of administrative law (as the Commission well knows).⁴⁴ The Designation Order, which was released more than a month after the Cost Recovery Order, clearly presumes that the issue of querying all LNP-capable NXXs remains unsettled.⁴⁵

(footnote continued from previous page)

7, 1998 (attached as Exhibit 3); Letter from Frank S. Simone, Government Affairs Director, AT&T, to A. Richard Metzger, Chief, Common Carrier Bureau, Federal Communications Commission, March 18, 1998 (attached as Exhibit 4).

⁴³ See SBC, p. 19 (citing Cost Recovery Order, ¶ 15).

⁴⁴ See, e.g., International Fabricare Institute v. EPA, 972 F.2d 384, 392 (D.C. Cir. 1992) ("[a] conclusory statement, of course, does not in itself provide the 'satisfactory explanation' required in rulemaking").

⁴⁵ See Designation Order, ¶ 14.

Further, SBC's claim that this issue already has been resolved in its favor crumbles upon examination of the Commission's LNP-related orders and rules. In fact, the great weight of Commission pronouncements and industry guidelines presume that queries will only be performed after a number in an NXX has actually ported. For example, the LNP Recon Order observed that:

Under LRN, a unique 10-digit number, or location routing number, is assigned to each central office switch. Carriers routing telephone calls to customers that have transferred their telephone numbers from one carrier to another perform a database query to obtain the location routing number that corresponds to the dialed telephone number. The database query is performed for all calls to switches from which at least one number has been ported.⁴⁶

The LNP Second Report and Order offers a similar description offers a similar description of local number portability.

Carriers routing telephone calls to customers who have ported their telephone numbers from one carrier to another query the local Service Management System (SMS) database to obtain the location routing number that corresponds to the dialed telephone number. This database query is performed for all calls to switches from which at least one number has been ported.⁴⁷

The Commission's rules governing call blocking under LNP also presume that queries are required only for calls to NXXs in which numbers actually have ported:

If a telecommunications carrier transmits a telephone call to a local exchange carrier's switch that contains any ported numbers, and the telecommunications carrier has failed to perform a database query to determine if the telephone number has been ported to another local exchange carrier, the local exchange carrier may block the unqueried call only if performing the database query is likely to impair network reliability.⁴⁸

⁴⁶ First Memorandum Opinion and Order on Reconsideration, Telephone Number Portability, 12 FCC Rcd. 7236, 7283, 7346-47 (1997), ¶ 6 (emphasis added) ("LNP Recon Order").

⁴⁷ LNP Second Report and Order, ¶ 8 (emphasis added).

⁴⁸ 47 C.F.R. § 52.26(a)(3) (emphasis added).

The Commission also implicitly recognized that queries need only be performed after at least one number ports when it defined a "default routed call" in the LNP Second Report and Order.

A 'default routed call' situation would occur in a Location Routing Number system as follows: when a call is made to a telephone number in an exchange with any ported numbers, the N-1 carrier (or its contracted entity) queries a local Service Management System database to determine if the called number has been ported.⁴⁹

If a default routed call situation can only exist after a number has ported in an NXX, then by definition a LEC may not charge an N-1 carrier for a default query when that N-1 carrier delivers an unqueried call to an NXX in which no numbers have yet been ported. In addition, as AT&T demonstrated in the attached Exhibits, the NANC Process Flows adopted by the Commission in its LNP Second Report and Order make clear that queries need only be performed when at least one number has been ported in an NXX.⁵⁰ These and other references in the Commission's prior orders assume that N-1 carriers need not make queries unless and until at least one number has ported in an NXX.

The most devastating flaw in Bell Atlantic's and SBC's approach to LNP queries is the simple and indisputable fact that it would require queries to be performed for no valid purpose -- and would charge carriers a fee for this bogus "service."⁵¹ Such a result cannot possibly

⁴⁹ LNP Second Report and Order, ¶ 76 (emphasis added).

⁵⁰ See Exhibit 1, pp. 7-9; Exhibit 3; and Exhibit 4 for a full discussion of the NANC Process Flows and their implications for LNP query charges.

⁵¹ In addition, as noted above, both SBC and Bell Atlantic apparently intend to charge for queries even on intraoffice calls, for which no query is necessary even after the first number ports in an NXX. See infra, Section IV.

comport with the "just and reasonable" standard of § 204. The bottom line is this: until a number actually ports in an NXX, no LNP query is necessary to properly route calls to that NXX.

Indeed, the Designation Order recognizes that there is no need to perform queries in NXXs in which no number has been ported.

Bell Atlantic, Pacific Bell, and Southwestern Bell plan to assess a default query charge on unqueried calls delivered to any NXX designated as number portable. We understand this to mean that these carriers propose to assess the default query service charge for calls to NXXs where the carrier has the capability to query, and may actually be querying all calls, but does not have a need to do so in order to correctly route calls because no number in fact has been ported from that NXX. We designate as an issue for investigation whether imposing query charges on calls to number portable NXXs is reasonable given the absence of a need to query if no number has ported from an NXX.⁵²

Moreover, Bell Atlantic and SBC admit that that they do not need to perform queries in NXXs in which no numbers have ported in order to properly route calls. Bell Atlantic's direct case states (p. 4) that:

When a carrier delivers an unqueried call to an end office, the end office suspends call processing and unlike a tandem switch, checks its internal line translation information to determine whether the called number is in the switch. If this internal information indicates the called number is still in the switch, then normal call processing resumes, and the call is completed within the switch.

Even SBC admits (p. 20), albeit disingenuously, that it need not perform such queries in order to properly route calls: "It is true that calls to NXXs without a ported number will not always require a query in order to route correctly." SBC does not elaborate on the meaning of "will not always require a query." However, to the best of AT&T's knowledge, the proper routing of calls

⁵² Designation Order, ¶ 14 (emphasis added).

to NXXs without ported numbers will never require an LNP query -- indeed, if no numbers have ported, then a query cannot return useful information.⁵³

Second, both SBC and Bell Atlantic attempt to argue that performing queries only on calls to NXXs in which at least one number had ported would be inefficient (or even impossible). As a preliminary matter, the example of Ameritech demonstrates conclusively that it is technically feasible to charge for LNP queries in the manner AT&T proposes. That BOC clarified in the prior LNP tariff investigation that it intends to charge for queries only after the first number ports in an NXX.⁵⁴

⁵³ If the calling party dials a number that is not being used in an NXX in which no number has ported, the end office switch will perform a query in order to determine whether the number in question has been ported off the switch. This circumstance will occur only rarely, and when it does, the LNP query that results provides no information that is necessary, or even useful, in routing or completing the call.

In addition, if a carrier has set a tandem switch to query all calls passing through it, then a call to an NXX with no ported numbers that passes through that tandem will generate a query. In that situation, however, the query again returns no necessary or useful information; and, in all events, a LEC's decision to query all calls at the tandem cannot affect the scope of an N-1 carrier's obligation to query calls pursuant to the Commission's rules.

⁵⁴ See Reply Comments of Ameritech, filed February 27, 1998, p. 14 in Number Portability Query Services, CC Docket No. 98-14. In addition, even if there were any evidence to support the claim that it is not feasible to perform queries in this fashion, neither SBC, Bell Atlantic, nor any other carrier sought reconsideration of the Commission's adoption of the NANC Process Flows, which, as AT&T shows in the attached Exhibits, clearly contemplate that query charges will begin only after the first number ports in an NXX.

Bell Atlantic and SBC's claim of "inefficiency" is equally unavailing. Bell Atlantic rests its argument (p. 8) on its assertion that it will require "three hours' work per NXX" to initiate querying. That figure appears to be wildly inflated, and is wholly unsupported as well. Initiating querying in an NXX is an automated, software-based change -- and a change that should be thoroughly routinized as each BOC will have to repeat it many times. And, once again, SBC and Bell Atlantic cannot deny that Ameritech has stated unambiguously that it will do what they assert cannot reasonably be done.

In all events, even if Bell Atlantic and SBC truly believe that they cannot now implement LNP so as to only query NXXs from which numbers have actually ported, they are free to conduct whatever queries they see fit. As AT&T has repeatedly stated, it "does not believe that the Commission should dictate to carriers how they should introduce LNP into their networks."⁵⁵ That uncontroversial fact does not mean, however, that those BOCs may force N-1 carriers to pay for useless queries simply for the privilege of terminating calls to their switches. Accordingly, SBC's dire prediction (p. 21) that "A change at this point would require removal of routing translations for thousands of NXXs in hundreds of switches, only to have to input and test them again when the first number ports" is simply false. SBC need not alter any aspect of its LNP implementation plans except its unlawful proposal to charge other carriers for queries that have no valid purpose.

⁵⁵ Exhibit 3, p. 2.

It is also clear that the fact that SBC or Bell Atlantic may have incurred certain costs in order to implement LNP queries in the illegal manner proposed their tariffs is entirely irrelevant. For example, SBC complains that (p. 25) that querying only NXXs from which numbers have ported "would require fundamental modification to SWBT's and Pacific's billing systems." At bottom, SBC asserts that if, as AT&T believes, SBC planned to implement its LNP query service in an illegal and unreasonable manner, then SBC's competitors should be forced to pay higher query charges in order to hold SBC harmless for this error. That argument is baseless. SBC cannot plausibly contend that it was not aware that many carriers disputed its interpretation of the Commission's LNP rules, or that it was reasonable for it to seek to charge its competitors for a service SBC knew to be useless. As shown above, SBC also had ample notice queries for which it was permitted to bill N-1 carriers by virtue of the Commission's repeated discussions of LNP in its prior orders.

SBC asserts that "The only possible justification for a permanent solution that does not include queries for LNP available NXXs is if CLECs believe that LNP will not spread across most, if not all, of the portable NXXs in a short period of time."⁵⁶ This argument is richly ironic, given that SBC has done so much to frustrate local competition and to prevent CLECs from entering its local markets and thereby utilize LNP. To permit SBC and Bell Atlantic to charge for LNP queries in all NXXs open for portability without regard to whether any CLEC actually has ported a number in that NXX would create a strong disincentive for incumbent LEC monopolists to open their markets to competition, as they could collect charges for unnecessary queries

⁵⁶ SBC, p. 26 (emphasis in original).

without ever permitting CLECs to actually make sufficient market entry to widely utilize LNP. The Commission's LNP rules do not countenance such an anticompetitive result.

Finally, in response to the Designation Order's request (§ 14) for estimates of what the BOCs' LNP query charges would be if they queried only calls to NXXs in which numbers had ported, SBC offers a one-page exhibit, while Bell Atlantic provides no information. Although it is impossible to fully evaluate SBC's Appendix C, since that BOC provides no supporting data or information as to its methodology, it is clear that SBC has sought to improperly inflate its cost estimates. Notes 1 and 2 to Appendix C indicate that SBC has included charges for work necessary to convert its own billing and other systems from their current configuration, in which SBC would charge for queries on all calls to portable NXXs. As AT&T demonstrated above, it would be unreasonable to permit SBC to force other carriers to pay its costs to belatedly amend its systems so as to charge for queries only on calls to NXXs in which numbers had ported.

CONCLUSION

For the foregoing reasons, the Commission should reject all of the proposed tariffs under investigation in this proceeding, and should direct Ameritech, Bell Atlantic, SWBT and Pacific to re-file their LNP query tariffs with proper supporting data. In addition to declaring the tariffs at issue unlawful, the Commission should resolve the issues addressed in the instant pleading in accord with the arguments offered herein.

Respectfully submitted,

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July 10, 1998

AT&T Exhibit 1

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of)	
Number Portability Query Services)	CC Docket No. 98-14
Ameritech Tariff F.C.C. No. 2, Transmittal Nos. 1123, 1130)	CCB/CPD 97-46
Bell Atlantic Tariff F.C.C. No. 1, Transmittal No. 1009)	CCB/CPD 97-52

OPPOSITION TO DIRECT CASES

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SUMMARY

The Commission's Designation Order in the instant proceeding found that Ameritech's and Bell Atlantic's LNP query service tariffs failed to provide sufficient cost justification or other support to demonstrate the reasonableness of the charges they proposed. Despite these unequivocal findings, the direct cases offer only halfhearted efforts to justify the tariffed query charges – efforts which are patently inadequate to carry the RBOCs' burden of proof. The data Ameritech and Bell Atlantic do provide, however, serve to create more questions than they answer, and in many instances reveal significant inconsistencies or flawed assumptions. Accordingly, the Commission should reject Ameritech's and Bell Atlantic's tariffs as unlawful, and direct them to re-file their LNP query service tariffs with proper supporting data.

To the limited extent that Ameritech's and Bell Atlantic's filings do permit meaningful analysis, it is plain that their LNP query tariffs are deeply flawed. First, their tariff filings indicate that both RBOCs intend to charge for unnecessary LNP queries, in direct contravention of the NANC Process Flows adopted in the Commission's LNP Second Report and Order. Both tariffs also improperly use fully distributed, rather than incremental, costs – contrary to the Commission's prior guidance regarding cost recovery for interim number portability.

Bell Atlantic's tariff impermissibly seeks to allocate costs for modifications to SS7, OSSa, and other systems that are neither caused by, nor related to, LNP query services. In contrast, Ameritech's filing candidly admits that the majority of its systems-related costs to implement LNP are not used to provide or bill LNP query service, and so claims to have excluded those unrelated costs.

Ameritech's tariff estimates that it will require an utterly implausible seven hours per account per month simply to establish an account for billing default LNP queries. Moreover, it proposes to levy this so-called "nonrecurring" charge on N-1 carriers in each and every month that they deliver default traffic to Ameritech's network. In direct contrast, Bell Atlantic does not propose any such explicit "non-recurring" charge for default queries. Ameritech's proposed charge is plainly unreasonable and should be rejected.

Ameritech's and Bell Atlantic's query demand estimates differ wildly, laying bare the uncertainty inherent in predicting LNP query volumes. Such forecasts are, however derived, no more than "best guesses" as to how fast local competition will develop and how many customers will choose to port their numbers. Given the radical uncertainty surrounding query demand forecasting, and the fact that the number of queries one assumes is a major determinant of per query charges, the Commission should approve tariffs for LNP query rates only on a yearly basis, and direct that subsequent year's tariffs be adjusted to reflect over- or undercharging from the previous year.

Finally, the Commission should reject Ameritech's proposal to block prearranged queries that exceed carriers' forecast volumes by more than 125%. Ameritech should not be permitted to require its potential competitors to provide it with forecasts of their anticipated query volumes, and in all events offers no justification for its arbitrary 125% cut-off. More fundamentally, the Commission's LNP Second Report and Order adopted NANC recommendations, arrived at by industry consensus, that simply do not permit carriers to block prearranged queries.

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)	

OPPOSITION TO DIRECT CASES

Pursuant to the January 30, 1998 Order Designating Issues For Investigation ("Designation Order"), AT&T Corp. ("AT&T") hereby opposes the direct cases filed by Ameritech and Bell Atlantic concerning the lawfulness of their long-term number portability query service tariff ("LNP query service") filings. For the reasons discussed below, Ameritech and Bell Atlantic fail even to shoulder -- much less to carry -- their burden of proving that the rates they seek to establish are just and reasonable.¹ What little data these RBOCs do provide merely serves to raise significant doubts as to the validity of their filings. Accordingly, the tariffs at issue should be rejected as unlawful, and

¹ In this investigation, Ameritech and Bell Atlantic bear the burden of proving that their tariffs are just and reasonable. 47 U.S.C. § 204(a)(1); see also Designation Order, ¶ 9.

Bell Atlantic and Ameritech should be directed to re-file LNP query tariffs with proper supporting data.

I. AMERITECH AND BELL ATLANTIC HAVE CLEARLY FAILED TO MEET THEIR BURDEN OF PROOF

The Commission's order suspending the instant tariffs found that

Ameritech and Bell Atlantic have not provided sufficient cost justification and other support to demonstrate the reasonableness of the proposed charges and rate structures. For example, Ameritech and Bell Atlantic have not provided a sufficiently detailed explanation of the calculation of their proposed rates in relation to their costs....²

Despite this unequivocal conclusion that the RBOCs must come forth with further, more detailed justification for their proposed rates, neither direct case offers either sufficient data to permit the Commission or commenters to evaluate their proposed rates, or meaningful explanations of many of their assumptions or calculations. Bell Atlantic's direct case offers a scant 5 pages of text and a single page of summary figures. Ameritech's direct case, though more prolix, also presents virtually no actual figures to support its claims. The RBOCs' halfhearted efforts are patently inadequate to satisfy the Designation Order's requirement that they "present their costs in terms of the categories the Commission developed," "break investment and expense estimates into these categories," and "identify costs with sufficient specificity to allow the Commission and

² Memorandum Opinion and Order, Petition Of Ameritech To Establish A New Access Tariff Service And Rate Elements Pursuant To Part 69 Of The Commission's Rules, CCB/CPD 97-46, released October 30, 1997, ¶ 18 ("Suspension Order").

other parties to evaluate them.³ The Commission can and should reject the LNP query tariffs on this basis alone.

The perfunctory nature of the RBOCs' direct cases makes it impossible to test many of their key assertions. The data Ameritech and Bell Atlantic do provide, however, create more questions than they answer. For example:

- A catch-all category of so-called "Other Direct Expenses" accounts for over 82% of the cost of Ameritech's tandem queries, and over 90% of end office queries.⁴ Undefined "other expenses" make up 14% of recurring charges for Bell Atlantic's end office queries, and 30% of those charges for tandem and database queries.⁵ Neither Ameritech nor Bell Atlantic explains what items are included in these categories.
- Both Bell Atlantic and Ameritech seek to charge significantly higher rates for queries from end offices than from tandem switches, and both assert that this differential is due to increased costs to provide transport from end offices. Neither RBOC explains how its transport costs are calculated, making it impossible to determine the reasonableness of their transport cost assumptions.
- Bell Atlantic assumes a 15% cost of capital, but provides no justification for this figure, which is far higher than is reasonable.⁶ In contrast, Ameritech assumes a cost of capital of just 10%.⁷

³ Designation Order, ¶ 15.

⁴ Ameritech Transmittal No. 1123, Sept. 16, 1997, D&J Ex. 1, pp. 1-2.

⁵ Bell Atlantic Transmittal No. 1009, Oct. 30, 1997, Workpapers 7-1 through 7-3.

⁶ An appropriate cost of capital rate would be approximately 10%. See, e.g., AT&T ex parte filed December 11, 1997, Federal-State Board On Universal Service, CC Docket 96-45, Hatfield Model Release 5.0, Model Description, p. 60 (deriving cost of capital of 10.01%) ("Hatfield Model Release 5.0 Model Description").

⁷ Ameritech's cost of capital rate is computed from the per query investment, depreciation, and cost of money amounts from Ameritech Transmittal No. 1123, D&J Ex. 1, using standard financial calculations. Likewise, Bell Atlantic's 15% cost of capital rate is computed from the per query investment, depreciation, and cost of money amounts in Bell Atlantic Transmittal No. 1009, Workpaper 7-1.

• Both Bell Atlantic and Ameritech appear to calculate depreciation using too short a life -- Bell Atlantic uses approximately 6.4 years, while Ameritech uses approximately 7 years.⁸ No explanation is provided for the appropriateness of these depreciation lives. The current version (5.0) of the Hatfield Model does not calculate STP and SCP lives separately, but includes those lives in its digital switching category, which assumes a depreciation life of 16.66 years.⁹

• The single-page attachment to Bell Atlantic's direct case depicts expenses for multiple right-to-use fees as well as STP maintenance and administrative charges. No information is provided as to sources of these charges, which may have been recovered in previous or ongoing state proceedings or may otherwise be improper.

• Ameritech states at page 7 of its direct case that its query rates include "a factor representing the percent [sic] of additional employee related expenses required to provision the query service." However, Ameritech nowhere explains how it calculated this employee expense factor, and it is thus impossible to evaluate its reasonableness.

Moreover, the Suspension Order expressly conditioned its ruling on Ameritech's and Bell Atlantic's compliance with the yet-to-be-established LNP cost recovery rules.

The grant of these petitions [to establish the LNP query rate elements] will be subject to the Commission's determinations in CC Docket No. 95-116. We will require Ameritech and Bell Atlantic to conform their rates, rate structures, regulations, and services offered in these tariffs to any determinations made by the Commission in that proceeding.¹⁰

⁸ Ameritech Transmittal No. 1123, D&J Ex. 1; Bell Atlantic Transmittal No. 1009, Workpapers 7-1 through 7-3.

⁹ See Hatfield Model Release 5.0 Model Description, pp. 61. The Hatfield Model determined service lives for 23 categories of equipment "based on their average projection lives adjusted for net salvage value as determined by the three-way meetings (FCC, State Commissions, LEC) for 76 LEC study areas including all of the RBOCs, SNET, Cincinnati Bell, and numerous GTE and United companies." *Id.*, p. 60.

¹⁰ Suspension Order, ¶ 17.

As of the date of this Opposition the LNP cost recovery rules have not been issued.

Accordingly, Bell Atlantic's and Ameritech's tariffs are based on each RBOC's assumptions as to what those rules might require.

It is plain, however, that Bell Atlantic's and Ameritech's conceptions of LNP cost recovery differ widely. For example, Bell Atlantic argues that all of its LNP-related costs to upgrade its SS7, OSS and billing systems should be factored into its query charges, including, inter alia, modifications to ordering systems that will be used to manage the actual porting of numbers, and systems that track maintenance requests from Bell Atlantic customers.¹¹ In contrast, Ameritech asserts that it included systems-related costs "only to the extent they were necessary for the provision of query service," and so did not include systems changes that related to, e.g., the porting of numbers rather than to querying.¹²

Neither the Commission nor commenters can reasonably hope to fully evaluate the RBOCs' compliance with standards that do not yet exist. This fundamental fact has sweeping implications. Bell Atlantic summarily asserts that its proposed rates include only Type I (shared industry costs of LNP) and Type II (costs directly related to LNP) costs.¹³ But at this point, that claim is mere puffing -- the Commission has yet to

¹¹ See Bell Atlantic Direct Case, pp. 2-3.

¹² Ameritech Direct Case, p. 5. It also bears noting that SBC proposed a rate of only 0.3 cents for both end office and tandem LNP queries -- which is significantly lower than Ameritech's or Bell Atlantic's proposals, and which contrasts with those RBOCs' suggestion that end office and tandem queries should be priced differently. See SBC Transmittal No. 2638, Tariff F.C.C. No. 73, Section 34.5.

¹³ See Bell Atlantic Direct Case, p. 2.

specify what expenses will be deemed "Type II" costs and, as Bell Atlantic well knows, that issue has been hotly disputed in the Commission's cost recovery proceeding. The absence of LNP cost recovery rules makes meaningful evaluation of the instant tariffs impossible. Bell Atlantic and Ameritech can simply assume away almost any objection by hypothesizing that the Commission might allow them to do precisely what they propose.

In sum, Ameritech and Bell Atlantic have provided so little information that the Commission cannot reasonably hope to prescribe appropriate rates for LNP queries based on the record in this proceeding. Given the procedural posture of this matter, the Commission should reject the instant tariffs and order the BOCs to re-file them with proper cost support, in order to protect query purchasers from overcharges.¹⁴

Neither Bell Atlantic nor Ameritech would be injured by being required to re-file their LNP query service tariffs -- indeed, they have invited that result by opting not to provide the information required by the Designation Order. On the day that direct cases in this investigation were due, SBC and Pacific Bell sought permission to withdraw

¹⁴ Section 204(a)(2)(A) of the Communications Act requires the Commission to resolve the instant investigation within five months after the date that the LNP query tariffs became effective. That five-month period will have run at the end of March 1998. After that time, Ameritech and Bell Atlantic are likely to contend that the Commission no longer has the power to continue in effect the accounting order established for this proceeding or to order retroactive adjustments to the tariffed LNP query rates, even if those charges are unreasonable or are contrary to its cost recovery rules. Such a result would be both irrational and unjust, as it would deprive carriers that must purchase LNP query services from the instant tariffs of all legal remedies against overcharges. To prevent that result, the Commission should, as shown above, reject the tariffs under investigation in this proceeding and order Ameritech and Bell Atlantic to re-file new LNP query service tariffs.

their existing LNP query tariffs, and indicated that they intended to file new tariffs for those services in March.¹⁵ Meanwhile, U S West, GTE and BellSouth have yet to file LNP query tariffs of any kind. Thus, Bell Atlantic's and Ameritech's fellow ILECs plainly believe that they have sufficient time to get the necessary query-related tariff provisions in place prior to implementation of permanent LNP.

With implementation of long-term LNP scheduled to begin March 31, 1998 in the first round of MSAs, there remains sufficient time for Ameritech and Bell Atlantic to file revised LNP query tariffs. When the BOCs re-file their LNP query tariffs with meaningful data to support them, the Commission should again suspend them for one day and set them for investigation -- an investigation that can be conducted against the framework of the LNP cost recovery rules that the Commission is expected to release imminently.

II. THE COMMISSION'S LNP ORDERS PROHIBIT CHARGES FOR QUERIES UNLESS A CALL TERMINATES TO AN END OFFICE FROM WHICH AT LEAST ONE NUMBER HAS BEEN PORTED

Even if their rates were otherwise properly cost-supported (and, as shown above, they are not) both Ameritech's and Bell Atlantic's tariff filings indicate that those RBOCs intend to charge for unnecessary LNP queries -- a practice that would be facially unreasonable. The NANC Process Flows, which the Commission adopted in the Second

¹⁵ See Southwestern Bell Telephone Company, Response to Order Designating Issues for Investigation and Motion to Terminate Investigation Order, filed February 13, 1998, p. 2, in Number Portability Query Services, CC Docket No. 98-14; Pacific Bell, Response to Order Designating Issues for Investigation and Motion to Terminate Investigation Order, p. 2, filed February 13, 1998, in id.

Report and Order in its LNP docket, specify that queries need only be performed when at least one number has been ported from an NXX.¹⁶ That is, N-1 carriers are not required to perform queries before delivering a call to an NXX unless a number in that NXX has actually been ported.

Contrary to this requirement, Ameritech's tariff states that

Terminating calls from N-1 carriers upon which a query has not been performed to numbers in the Telephone Company's network with NXX codes that have been designated as portable may require a query to the LNP data base.¹⁷

Similarly, Bell Atlantic's tariff indicates that queries will be performed for calls "to numbers in the Telephone Company's network with NXX codes that have been designated as portable."¹⁸ Both RBOCs' tariffs thus propose to charge N-1 carriers for queries as soon as an NXX is designated as portable -- that is, as soon as permanent LNP becomes available -- rather than after a number has actually been ported in that NXX. These tariff provisions will require all N-1 carriers to perform unnecessary queries before delivering traffic to Ameritech's or Bell Atlantic's NXXs (if they have that capability, as many N-1

¹⁶ See North American Numbering Council, Local Number Portability Administration Selection Working Group, LNPA Technical & Operational Requirements Task Force Report, April 25, 1997, Appendix B, Figure 9, (adopted by the Commission in Second Report and Order, Telephone Number Portability, CC Docket No. 95-116, FCC 97-289, released August 18, 1997, ¶ 52 ("LNP Second Report and Order").

¹⁷ Ameritech Transmittal No. 1123, p. 166.4.1 (emphasis added).

¹⁸ Bell Atlantic Transmittal No. 1009, p. 890.19. At a subsequent page of its tariff, Bell Atlantic states that it only will charge for end office queries "to a Directory Number that has been ported out of the Telephone Company donor switch to a recipient switch" -- that is, for calls to numbers that have actually been ported. *Id.*, p. 890.22.

carriers will not), or else pay those RBOCs for performing a service that is both pointless and contrary to the Commission's policies.

The only possible justification for requiring queries to be performed for every NXX designated as portable is to increase the potential revenues for LNP query services. N-1 carriers that deliver traffic to an NXX on an unqueried basis, in full accord with the NANC process flows adopted by the Commission, should not be required to pay for this utterly superfluous "service."

III. THE COMMISSION'S PRIOR ORDERS MAKE CLEAR THAT QUERY CHARGES SHOULD BE BASED ON INCREMENTAL, NOT FULLY DISTRIBUTED COSTS

The Designation Order also seeks comment as to "whether carriers may include a fully distributed cost annual charge factor in query charges."¹⁹ The Commission's First Report and Order in its LNP docket unequivocally held that incremental costs, not fully distributed costs, are the proper measure of interim LNP costs: "The costs of currently available number portability are the incremental costs incurred by a LEC to transfer numbers initially and subsequently forward calls to new service providers using existing RCF, DID, or other comparable measures."²⁰ Neither Ameritech nor Bell Atlantic even attempts to distinguish this prior finding, or to explain why the Commission's

¹⁹ Designation Order, ¶ 9.

²⁰ First Report and Order and Further Notice of Proposed Rulemaking, Telephone Number Portability, CC Docket No. 95-116, FCC 96-286, released July 2, 1996, ¶ 129; see also, e.g., id., ¶¶ 130 ("states may apportion the incremental costs of currently available [LNP] measures among relevant carriers"), 136 (approving New York scheme to allocate "incremental costs of currently available number portability measures" and similar proposal in Illinois).

cost recovery standards for interim portability are not fully applicable to permanent LNP in this regard.

As a preliminary matter, Ameritech argues at page 9 of its direct case that it "did not use a fully distributed cost methodology to develop its query service rates." However, line 3 of Exhibit 3 to the Description and Justification filed with Ameritech's Transmittal No. 1123 is an "FDC annual charge factor," and so Ameritech's assertion cannot be credited.

In its Direct Case, Ameritech attempts to argue that LNP query service "is not the number portability required to be provided by LECs under Section 251(b)(2) ... [and] its costs are thus not subject to the 'competitively neutral cost recovery' requirement of Section 251(e)(2)."²¹ Ameritech then asserts that LNP query service is "a call-related database query service," and makes a passing citation to the Commission's LNP Second Report and Order as purported support for its claim.²²

In fact, nothing in any Commission order suggests that query service is anything other than an integral part of local number portability. Contrary to Ameritech's unelaborated suggestion that § 251(b)(2) somehow excludes query service from the scope of LNP, that section requires LECs to provide local number portability "in accordance with requirements prescribed by the Commission." The Commission has explicitly required LECs to provide query service for default-routed calls, making plain that that

²¹ Ameritech Direct Case, pp. 9-10.

²² *Id.*, p. 10.

service is an essential aspect of LNP, without which that system would be far less reliable and stable.

The RBOCs' use of fully distributed costs ("FDC") simply cannot be justified. Ameritech and Bell Atlantic presumably already are recovering their full costs for "overhead" in their other rates -- to permit them to spread portion of those costs over query services would authorize a double recovery. Moreover, even if an FDC methodology were appropriate for LNP query services (which it is not), the FDC factors used in the instant tariffs are patently unreasonable. Ameritech's FDC factor increases its proposed rates by over 77%, while Bell Atlantic uses fully distributed loading of 60%.²³ Recent state proceedings in Bell Atlantic's territory to determine overhead loading factors for unbundled network elements have used a figure of approximately ten percent.

IV. BELL ATLANTIC'S CHARGES IMPROPERLY INCLUDE COSTS OF SS7, OSS AND BILLING SYSTEMS THAT ARE NOT DIRECTLY RELATED TO LNP QUERY SERVICES

Paragraph 9 of the Designation Order seeks comment on whether costs to modify SS7, OSS and billing systems "are costs not directly related to providing local number portability, and therefore are not properly included in query charges." As discussed above, Ameritech states that its rates include SS7, OSS and billing systems costs "only to the extent they were necessary for the provision of query service," and so did not include costs attributable to other aspects of LNP.²⁴ In fact, Ameritech concludes that

²³ Ameritech Transmittal No. 1123, D&J Exhibit 3; Bell Atlantic Transmittal No. 1009, D&J Workpaper 7-5.

²⁴ Ameritech Direct Case, p. 5.

"most costs are required for LNP generally, but are not used to provide or bill the Query Service."²⁵

Ameritech's observations point out what should be axiomatic: costs such as modifications to provisioning systems that will be used to process requests to port numbers, or to enable Bell Atlantic's internal billing and maintenance systems to identify customers by LRN rather than by telephone number, should not be attributed to LNP query services. N-1 carriers that purchase queries do not cause such costs, and do not benefit from them (at least not in their role as N-1 carriers). The proper costs for inclusion in query charges are those that an N-1 carrier would incur to perform queries on its own behalf – that is, for example, the costs that a carrier that served only as an IXC would bear. Plainly, many of the costs Bell Atlantic seeks to build into its query charges fail this test, and so must be excluded.

V. AMERITECH'S PROPOSED NONRECURRING CHARGES ARE FACIALLY UNREASONABLE

Paragraph 14 of the Designation Order finds that "[i]n general, carriers have failed to justify" their proposed nonrecurring charges. Ameritech's Transmittal No. 1123 indicates that RBOC estimated that it will require seven hours per account per month simply to establish an account for billing default LNP queries.²⁶ This "nonrecurring" charge will be levied on an N-1 carrier in each and every month that it delivers default traffic to Ameritech's network.

²⁵ Id., p. 6 (emphasis added).

²⁶ Ameritech Transmittal No. 1123, D&J Exhibit 2.

Ameritech's direct case offers only that this charge is justified because its employees will have to "manually investigate[] and bill[] an N-1 carrier for Default Traffic."²⁷ Its seven-hour estimate is radically overstated, however, for a task which should require little more than determining the appropriate carrier and entering a billing name and address in a computer system. Further, all or virtually all customers of Ameritech's "default query" service will also be purchasing exchange access from that ILEC on a regular basis in order to terminate interexchange calls in its territory. Ameritech therefore in most cases already will have established an account with those carriers, and therefore should not need to impose any non-recurring charges relating to billing.

Moreover, there is no basis for Ameritech's proposal to impose this so-called "nonrecurring" charge on a monthly basis. After a carrier has been billed during one month for default LNP query service, Ameritech cannot plausibly contend that it will require seven hours to set up billing in each subsequent month. In contrast, Bell Atlantic does not propose any such explicit "non-recurring" charge for default queries.

VI. AMERITECH AND BELL ATLANTIC FAIL TO PROVIDE ADEQUATE JUSTIFICATION FOR THEIR QUERY DEMAND FORECASTS

The Commission also sought comment on whether carriers' query demand forecasts are reasonable, and how they should treat their own demand. Query demand levels are critical to LNP query service rates, as that figure determines how widely the overall costs of queries will be spread, and thus the ultimate cost of that service.

²⁷ Ameritech Direct Case, p. 17.

Bell Atlantic's direct case does nothing more than refer to its previously filed Description and Justification (which the Designation Order already found lacking), and state that it included its own queries in its calculations and that these queries constituted 99.3617% of its total query demand.²⁸ That RBOC provides no information of any kind as to how it actually determined its total query volume. The information Bell Atlantic does provide, however, raises serious questions about its methodology.

First, Bell Atlantic's forecasted queries are based on the first year of LNP implementation ("year 1"). If year 1 costs were also used to determine Bell Atlantic's per query charge (it is impossible to determine this from the data Bell Atlantic submitted), then that practice would tend to inflate the tariffed rates. According to the attachment to the Bell Atlantic's direct case, its LNP costs for year 1 are the highest of the years covered by its projections. At the same time, it is also reasonable to assume that year 1 query volumes will be the lowest of the years covered by Bell Atlantic's figures, because the porting of telephone numbers will just be beginning. Thus, using year 1 figures to derive the per query rate would tend to make the numerator (costs) in the per query costs equation larger, while decreasing the denominator (number of queries), and thereby overstating the per query charge.

Further, based on the information Bell Atlantic's direct case gives as to query volumes, its investment per query appears to be significantly overstated. Bell Atlantic states at page 4 of its direct case that it estimated that its own traffic will account

²⁸ Bell Atlantic Direct Case, p. 4.

for 99.3617% of its total query volume. Workpaper 7-6 of its Transmittal No. 1009 shows that ~~non~~-Bell Atlantic queries were estimated at 550.228 million. Therefore, the total number of queries Bell Atlantic expects should be 550.228 million / .006383, or 86.202 billion queries. Workpaper 7-2 states that investment per query is \$0.002885. Therefore, Bell Atlantic's total investment is 86.202 billion x \$0.002885 = \$248.7 million. However, according to the attachment to Bell Atlantic's direct case, its total 5-year investment is \$90.7 million.

Ameritech states at page 15 of its direct case that it estimates that 15% of its queries will be for carriers other than itself. This figure is many orders of magnitude greater than Bell Atlantic's estimated .006383% queries for carriers other than itself, and serves to highlight the uncertainty of the entire enterprise of predicting LNP query volumes. Such forecasts are, however derived, no more than "best guesses" as to how fast local competition will develop and how many customers will choose to port their numbers -- issues which telecommunications industry participants, investors, and federal and state government officials would readily agree defy confident prediction.

Ameritech's proposed requirement that carriers requesting prearranged query service provide 3-month rolling estimates of their traffic volumes would add little, if any, additional certainty to query demand forecasts, as N-1 carriers are unlikely to have significantly greater insight into the future of local competition than does Ameritech. Further, any marginal added accuracy that Ameritech's proposal might yield is greatly outweighed by its anticompetitive aspects. It is readily foreseeable that requiring carriers to report expected call volumes at each end office and tandem could provide Ameritech with valuable competitive intelligence about its direct competitors. It should be sufficient

for carriers to report whether or not they intend primarily to utilize their own or another carrier's query services, or to use Ameritech's.

Given the radical uncertainty surrounding query demand forecasting, and the fact that the number of queries one assumes is a major determinant of per query charges, the Commission should approve tariffs for LNP query rates only on a yearly basis, and direct that subsequent year's tariffs be adjusted to reflect over- or undercharging from the previous year. By this means, the charges carriers pay over a period of years will tend to more closely reflect the actual costs of LNP query service than could be achieved by attempting multi-year demand forecasts.

VII. AMERITECH'S PROPOSED BLOCKING STANDARDS VIOLATE THE COMMISSION'S PRIOR LNP ORDERS

Ameritech proposes to block prearranged queries that exceed carriers' forecast volumes by more than 125% when that traffic "threatens to disrupt operation of its network and impair network reliability."²⁹ The Commission should reject this proposal on two grounds: First, as AT&T has shown, Ameritech should not be permitted to require carriers that seek to prearrange queries to submit forecasts of their anticipated query volumes. Because Ameritech should not be allowed to require such forecasts, it accordingly may not block carriers' LNP queries on the grounds that their forecasts fail to meet a particular accuracy threshold. Moreover, even if Ameritech's proposed 125% blocking standard were otherwise permissible, its direct case offers no justification for that arbitrary cut-off. Although Ameritech describes its intention to comply with industry

²⁹ See Ameritech Direct Case, p. 24; Ameritech Transmittal No. 1130, § 6.4.2(C)(3).

standards regarding its SCP capacity utilization,³⁰ it nowhere explains how it derives its tariffed 125% figure from this analysis.

Ameritech's proposal also should be rejected on the grounds that the Commission's LNP Second Report and Order does not permit carriers to block prearranged queries. That order adopted a NANC recommendation that the Commission "permit carriers to block 'default routed calls' coming into their networks."³¹ The NANC recommendation made no provision for blocking prearranged queries, providing only that:

Unless specified in business arrangements, carriers may block default routed calls incoming to their network in order to protect against overload, congestion, or failure propagation that are caused by the defaulted calls.³²

Nothing in the LNP Second Report and Order suggests that LECs may block prearranged queries in addition to default routed calls. In fact, that order urges CMRS providers, who are not responsible for querying calls until December 31, 1998, "to make arrangements with LECs as soon as possible to ensure that their calls are not blocked."³³ As that order recognizes, the NANC's LNP architecture recommendations "represent industry consensus" and were not challenged by any party when the Commission sought public

³⁰ Ameritech Direct Case, pp. 20-21.

³¹ LNP Second Report and Order, ¶ 76; see also *id.* ("we will allow LECs to block default routed calls, but only in specific circumstances when failure to do so is likely to impair network reliability") (emphasis added).

³² North American Numbering Council, Local Number Portability Administration Selection Working Group, LNPA Technical & Operational Requirements Task Force Report, April 25, 1997, § 7.10 (emphasis added).

³³ LNP Second Report and Order, ¶ 78.

comment on that document.³⁴ Ameritech should not now be permitted to seek to modify the terms on which all carriers and the Commission have agreed LNP should be administered.

CONCLUSION

For the foregoing reasons, the Commission should reject the Ameritech and Bell Atlantic LNP query service tariffs under investigation in this proceeding.

Respectfully submitted,

AT&T CORP.

By /s/ James H. Bolin, Jr.
Mark C. Rosenblum
Peter H. Jacoby
James H. Bolin, Jr.

Its Attorneys

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(908) 221-4617

February 20, 1998

³⁴ Id., ¶ 71.

CERTIFICATE OF SERVICE

I, Terri Yannotta, do hereby certify that on this 20th day of February, 1998, a copy of the foregoing "Opposition To Direct Cases" was mailed by U.S. first class mail, postage prepaid, to the parties listed below:

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

Larry A. Peck, Esq.
Ameritech
2000 West Ameritech Center Drive
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/s/ Terri Yannotta
Terri Yannotta

February 20, 1998

AT&T Exhibit 2



Frank S. Simone
Government Affairs Director

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September 25, 1997

RECEIVED

SEP 25 1997

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N. W. - Room 222
Washington, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex parte - CC Docket No. 95-116, Telephone Number Portability

Dear Mr. Caton:

Today, Albert Lewis, Harry Sugar and I, all of AT&T, met with Kathy Franco, Legal Advisor to Commissioner Chong. The purpose of the meeting was to discuss AT&T's position on the allocation of and recovery of local number portability implementation costs as previously expressed in its comments in the above-referenced proceeding. The attached documents were used as a discussion guide.

Two copies of this Notice are being submitted to the Secretary of the FCC, in accordance with Section 1.1206(a)(1) of the Commission's rules.

Sincerely,

ATTACHMENT

cc: K. Franco

CC Docket No. 95-116, FNPRM
Telephone Number Portability Cost Recovery

The Record

The record in this proceeding supports the following Commission action:

- Recognizing that the pooling and allocating of number portability costs rewards inefficient behavior and requiring each carrier to bear its own costs
 - Ameritech: "A mechanism involving pooling is administratively expensive and may incent and reward inefficiency."
 - PacTel: "Type 2 costs should not be pooled and allocated. Rather, each carrier should bear its own costs."
 - SBC: "Each carrier recovers its own costs: ... This arrangement better ensures that carriers will deploy more efficiently."
- Supporting a 5-year recovery period for number portability implementation costs
- Recognizing Type 3 costs as general network upgrades and, therefore, not part of this proceeding

CC Docket No. 95-116, FNPRM
Telephone Number Portability Cost Recovery

Remaining Issues

- We remain concerned that ILEC Type 2 cost estimates improperly include Type 3 costs
 - For example, many ILECs have included the cost of accelerated switch replacements as Type 2 costs

- ILEC number portability costs should not be passed through to other carriers as local interconnection rates or access rates.
 - “Application of the ‘competitively neutral’ standard requires each provider of telephone exchange service -- incumbent or facilities-based entrant -- to recover its number portability costs from its own end-user customers and not from other facilities-based carriers.” US West Comments, August 18, 1997.

- If the Commission agrees that ILEC recovery of number portability implementation costs through charges to other carriers is inappropriate and/or not competitively neutral, then it should directly assign these costs to the intrastate jurisdiction as part of the separations process.
 - Absent direct assignment to the intrastate jurisdiction, AT&T estimates that approximately 15% of the number portability costs would be allocated to the interstate jurisdiction with only interstate access charges to IXCs as a recovery mechanism
 - This sets the stage for state commissions to allow number portability cost recovery via intrastate interconnection and access charges to other carriers

AT&T Exhibit 3



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January 7, 1998

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N. W. - Room 222
Washington, D. C. 20554

RECEIVED
JAN 7 '98
FEDERAL COMMUNICATIONS
COMMISSION
OFFICE OF SECRETARY

Re: CC Docket No. 95-116, Telephone Number Portability

Dear Ms. Roman Salas:

The attached letter was hand delivered to Mr. Metzger's office today. Please include a copy of this letter in the record of the above-referenced proceeding.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(1) of the Commission's rules.

Sincerely,

ATTACHMENT

cc: T. Power
J. Casserly
K. Dixon
P. Gallant
K. Martin
J. Schlichting
N. Fried



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January 7, 1998

Mr. A. Richard Metzger, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 95-116, Telephone Number Portability

Dear Mr. Metzger,

In its Second Report and Order in the Local Number Portability docket, the Commission concluded that the "N-1" carrier would be responsible for performing queries to identify the Location Routing Number ("LRN") required to route calls to the proper end office after implementation of permanent local number portability ("LNP").¹ That order held further that "if the N-1 carrier does not perform the query, but rather relies on some other entity to perform the query, that other entity may charge the N-1 carrier, in accordance with guidelines the Commission will establish to govern long-term number portability cost allocation and recovery."²

AT&T has recently learned that some ILECs have announced plans to perform LNP-related queries for every call that they terminate to a central office (NXX) code that has been designated as LNP-capable, whether or not any telephone numbers have in fact been ported in that NXX. Such queries are both unnecessary and contrary to the Inter-Service Provider LNP Operations Flows-Code Opening Processes recommended by the North American Numbering Council (NANC) and approved by the Commission in the Second Report and Order.³ Indeed, the sole purpose of performing queries for such calls can only be to generate revenue for the ILEC that terminates them, as these queries are completely unnecessary to the proper functioning of LRN-based LNP, and are not contemplated by the NANC's Technical and

¹ Second Report and Order, Telephone Number Portability, CC Docket No. 95-116, FCC 97-289, released August 18, 1997, ¶¶ 73-75 ("Second Report and Order"). As defined in that order, the N-1 carrier is the carrier that transfers a call to the "N" carrier – that is, the carrier that terminates that call to the end-user. See id., ¶ 73, n.207.

² Id., paragraph 75.

³ North American Numbering Council, Local Number Portability Administration Selection Working Group, LNPA Technical & Operational Requirements Task Force Report, Appendix B, Figure 9, April 25, 1997.

Operations Task Force Report, as is explained below. Accordingly, in its upcoming LNP cost-recovery order the Commission should make clear that an entity performing queries on behalf of an N-1 carrier may not charge that carrier for queries made for calls to NXXs in which no number has yet been ported.

The operations flows for the code opening process were agreed to by the members of the NANC Technical and Operations Task Force, approved by the LNP Administration Working Group, and then endorsed by the full NANC and forwarded to the Commission as part of its recommendations on LNP implementation. The Commission then released the NANC recommendations for public comment. No party offered any objections to the proposed operations flows, and the Commission subsequently approved them in the Second Report and Order.⁴

The operations flows for the code opening process describe a two-step procedure. First, the NXX code holder notifies the NPAC/SMS that a specified NPA-NXX is to be opened for portability. The NPAC/SMS then provides advance notification to the carriers. In the second step, when the first telephone number ports in the NPA-NXX the NPAC/SMS notifies carriers, which then must complete the process of opening the code for LNP. The carriers have 5 days to activate the LNP trigger so that queries will be performed for calls terminating to numbers in the affected NPA-NXX. If no numbers have yet been ported in that NPA-NXX, there is simply no reason to perform LNP-related queries -- indeed, this is the reason behind the design of the LNP trigger described above.

The intent of this two-step procedure is to avoid unnecessary queries on calls to numbers in NPA-NXXs in which no number has yet ported. In this process, query volumes will increase gradually over time, rather than in one huge single step when LNP implementation is completed in an MSA.

AT&T does not believe that the Commission should dictate to carriers how they should introduce LNP into their networks. However, at a minimum, the Commission should clearly state in its upcoming order that if a carrier opts to perform queries on calls to numbers in NPA-NXXs in which no numbers have yet ported, that carrier may not charge the N-1 carrier for such queries.

Sincerely,



cc: T. Power
J. Casserly
K. Dixon
P. Gallant
K. Martin
J. Schlichting
N. Fried

⁴See Second Report and Order, ¶ 54.

AT&T Exhibit 4



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March 18, 1998

Ms. Magalie Roman Salas, Secretary
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RECEIVED

MAR 18 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex parte, CC Docket No. 95-116, Telephone Number Portability

Dear Ms. Roman Salas:

The attached letter was delivered to Mr. Metzger's office today. Please include a copy of this letter in the record of the above-referenced proceeding.

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Sincerely,

ATTACHMENT

cc: T. Power
J. Casserly
K. Dixon
K. Martin
P. Gallant
J. Jackson
N. Fried
L. Collier
C. Barnekov



Recycled Paper



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March 18, 1998

Mr. A. Richard Metzger, Jr., Chief
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Washington, D.C. 20554

Re: CC Docket No. 95-116, Telephone Number Portability

In its March 12, 1998 *ex parte* letter in the above-captioned proceeding,¹ SBC continues to argue that because it plans to perform unnecessary LNP queries for calls to NXXs as soon as they have been opened for portability, it therefore should be permitted to charge N-1 carriers for this utterly pointless "service." SBC is, of course, free to perform unneeded queries within its own network, if it chooses to do so. However, the Commission's LNP orders do not permit it to charge N-1 carriers for such queries.

As AT&T and other parties have shown in several recent pleadings,² the NANC Process Flows, which the Commission adopted in the LNP Second Report and Order, provide that queries need only be performed when at least one number has been ported from an NXX.³ That is, N-1 carriers are not required to perform queries before delivering a call to an NXX unless at least one number in that NXX actually has been ported.

Figure 9 of the NANC Process Flows, a copy of which is attached to this letter, plainly shows two distinct timelines: The first timeline, captioned "NPA-NXX Code Opening," depicts the process by which an NXX holder makes that NXX available for porting and

¹ Letter from Lincoln E. Brown, Director, Federal Regulatory, SBC Telecommunications, Inc., to Magalie Roman Salas, Secretary, Federal Communications Commission, March 12, 1998.

² See, e.g., Comments of AT&T Corp., filed March 9, 1998, pp. 10-14 in SBC Companies Petition for Waiver Under 47 C.F.R. § 52.3(d) And Petition For Extension Of Time Of The Local Number Portability Phase I Implementation Deadline, CC Docket No. 95-116, NSD File No. L-98-16.

³ See North American Numbering Council, Local Number Portability Administration Selection Working Group, LNP Technical & Operational Requirements Task Force Report, April 25, 1997, Appendix B, Figure 9, (adopted by the Commission in Telephone Number Portability, CC Docket No. 95-116, Second Report and Order, FCC 97-289, released August 18, 1997, ¶ 52 ("LNP Second Report and Order")).

notifies the NPAC/SMS that it has done so. A second, separate timeline in Figure 9, captioned "First TN Ported In NPA-NXX," indicates that after the first number is ported in an NXX, the NPAC/SMS broadcasts a "heads-up" notification to service providers, which then "complete the opening for the NPA-NXX code for porting in all switches." As a matter of simple logic, if SBC were correct that the NANC Process Flows require N-1 carriers to conduct queries for all calls to an NXX as soon as it is designated as portable, there would be no need for the second timeline in Figure 9. The requirement that service providers "complete the opening" of an NXX can only mean that they must then begin conducting queries for calls. Any other interpretation renders the NPAC's 'heads-up' notification superfluous, as it would merely alert N-1 carriers to continue doing what SBC asserts they should have been doing along, namely querying calls to that NXX.

Perhaps the most fundamental problem with SBC's approach to LNP queries is that it would require queries to be performed for no purpose whatsoever. The bottom line is this: until a number actually ports in an NXX, no LNP query is necessary to properly route any call to that NXX. The Commission implicitly recognized this fact in the LNP Second Report and Order, when it defined a "default routed call":

A 'default routed call' situation would occur in a Location Routing Number system as follows: when a call is made to a telephone number in an exchange with any ported numbers, the N-1 carrier (or its contracted entity) queries a local Service Management System database to determine if the called number has been ported.⁴

A LEC may only charge an N-1 carrier for querying a default-routed call when a call is placed to an NXX for which there exists some need to confirm the identity of the local carrier to which a particular number is assigned -- indeed, a "default-routed call" only occurs in that circumstance.

SBC's *ex parte* goes on to argue that activating LNP queries on an NXX-by-NXX basis would be "burdensome," and could create routing errors. This claim cannot be credited in light of the fact that Ameritech has made clear that it only intends to charge for LNP queries for calls to an NXX in which at least one number has ported.⁵ But even accepting SBC's claims *arguendo*, they demonstrate nothing more than the fact that SBC has not planned its PLNP implementation in a manner that comports with the Commission's requirements. Carriers that have designed their LNP processes to perform queries only after they receive the NPAC "heads up" notification in accordance with the NANC Process Flows should not be penalized because SBC has designed its network processes differently. SBC states in its *ex parte* that "No carrier indicated that NXX's [sic] in a given switch would require LNP activation at any time other than the initial deployment of LNP in that switch." Given the clear requirements of the NANC Process Flows and the LNP Second Report and Order, there was simply no need for

⁴ LNP Second Report and Order, ¶ 76 (emphasis added).

⁵ See Reply Comments of Ameritech, filed February 27, 1998, p. 14 ("Ameritech clarifies that it will only bill the Query Service rate on calls to a telephone number within a central office code (NXX) from which at least one number has been ported.") in Number Portability Query Services, CC Docket No. 95-116, CCB/CPD 97-46.

any carrier to so indicate. As AT&T stated above, if SBC believes that the manner in which it has chosen to implement LNP makes it necessary to query every call to an NXX that is open for portability (as Ameritech does not), it is free to do so. However, SBC may not charge N-1 carriers for unnecessary queries merely because it has elected to perform them.

SBC also attempts to argue that the dispute regarding its LNP query practices will not actually effect the amount it recovers in query charges. The March 12th *ex parte* contends that SBC's costs related to LNP query service will not be affected by the number of queries for which it can charge, and therefore that lowering the number of queries for which it can charge will simply make each query more expensive.

As a preliminary matter, this argument necessarily concedes a crucial point: SBC admits that performing queries only for calls to NXXs in which at least one number has been ported will not affect its costs. Accordingly, its protests that querying only such calls will require it to endure a "burdensome" process of activating each NXX for portability individually cannot be taken seriously, as by its own reckoning, any added "burden" will be so insubstantial that it will not cause any additional expense.

Further, SBC's argument that its proposal to charge N-1 carriers for unnecessary LNP queries will have no net cost effect fails to account for the fact that its proposal could affect the identity of its query service customers, not merely the per-query charge. Carriers such as AT&T that intend to perform their own LNP queries may nevertheless need to purchase LNP query service from other carriers if they are temporarily unable to perform queries for technical reasons. If LECs nationwide were to choose to perform LNP queries on all calls to NXXs designated as portable, an N-1 carrier that had designed its systems to comply with the NANC Process Flows might experience capacity and congestion problems until it could adjust to the sudden, tremendous volume of queries that it would be required to perform under SBC's new policy, and accordingly might be forced to purchase LNP query services that it otherwise could self-provision.

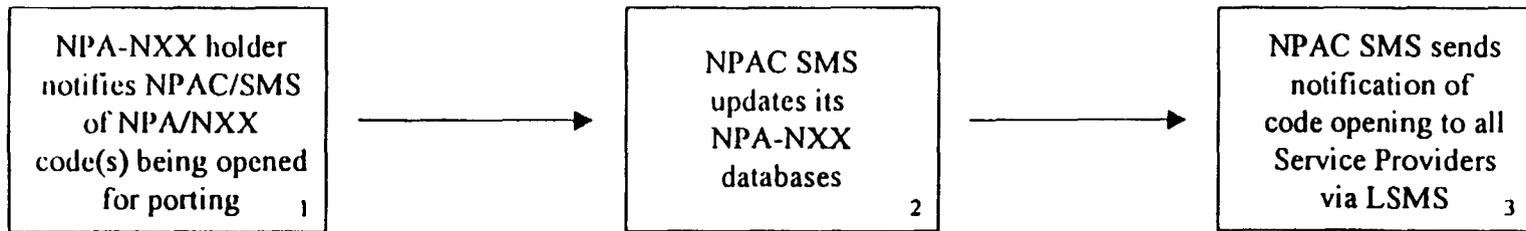
In summary, the Commission already has held that N-1 carriers are only required to perform (and to pay for) LNP queries for calls to an NXX in which at least one number has been ported, and should confirm that all tariffs for LNP query services must conform to this ruling.

Sincerely,

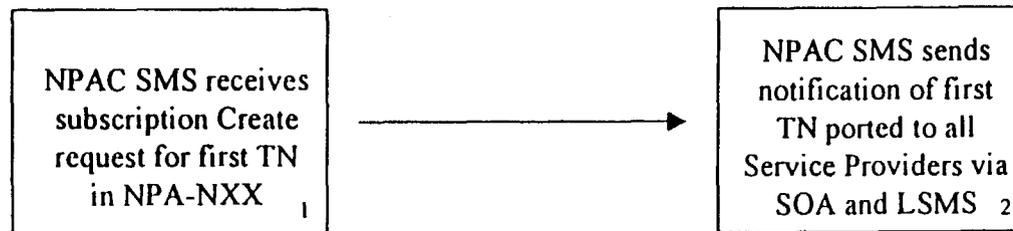


INTER-SERVICE PROVIDER LNP OPERATIONS FLOWS - CODE OPENING PROCESSES -

NPA-NXX Code Opening



First TN Ported in NPA-NXX



Inter-Service Provider LNP Operations Flows

Code Opening Processes Figure 9

NPA-NXX Code Opening

Step	Description
1. NPA-NXX holder notifies NPAC SMS of NPA-NXX Code(s) being opened for porting.	<ul style="list-style-type: none">• The service provider responsible for the NPA-NXX being opened must notify the NPAC SMS via the SOA or LSMS interface within a regionally agreed to time frame.
2. NPAC SMS updates its NPA-NXX databases	<ul style="list-style-type: none">• NPAC SMS updates its databases to indicate that the NPA-NXX has been opened for porting.
3. NPAC SMS sends notification of code opening to all Service Providers via LSMS.	<ul style="list-style-type: none">• The NPAC SMS provides advance notification of the scheduled opening of NPA-NXX code(s) via the LSMS interface.

First TN Ported in NPA-NXX

Step	Description
1. NPAC SMS receives subscription create request for first TN in NPA-NXX	<ul style="list-style-type: none">• Service Provider notifies NPAC SMS to create subscription for the first telephone number in an NPA-NXX.
2. NPAC SMS sends notification of first TN ported to all service providers via SOA and LSMS	<ul style="list-style-type: none">• When the NPAC SMS receives the first subscription create request in an NPA-NXX, it will broadcast a "heads-up" notification to all service providers via both the LSMS and SOA interfaces. Upon receipt of the NPAC message, all service providers, within five (5) business days, will complete the opening for the NPA-NXX code for porting in all switches.

CERTIFICATE OF SERVICE

I, Terri Yannotta, do hereby certify that on this 10th day of July, 1998, a copy of the foregoing "Opposition To Direct Cases" was mailed by U.S. first class mail, postage prepaid, to the parties listed below:

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/s/ Terri Yannotta
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July 10, 1998

CERTIFICATE OF SERVICE

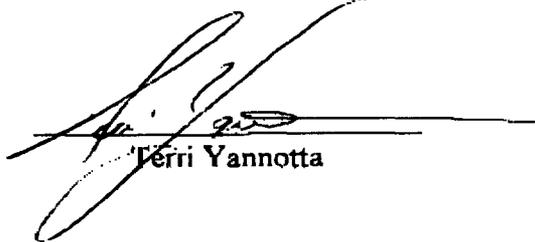
I, Terri Yannotta, do hereby certify that on this 21st day of January, 1999, a copy of the foregoing "Petition To Reject Or Suspend Tariffs" was mailed by U.S. first class mail, postage prepaid, and sent via facsimile to the parties listed below:

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Terri Yannotta

January 21, 1999