

Before the
Federal Communications Commission
Washington, D.C. 20554

JAN 27 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Long Term Telephone Number Portability)	CC Docket No. 95-116
Tariff Filings)	RM 8535
)	
Pacific Bell Tariff F.C.C. No. 128)	
Transmittal No. 2029)	
)	
Southwestern Bell Tariff F.C.C. No. 73)	
Transmittal No. 2745)	

REPLY TO PETITIONS TO REJECT OR SUSPEND TARIFFS

SBC Communications Inc., on behalf of Pacific Bell and Southwestern Bell Telephone Company, ("SBC") files this Reply in response to the Petition to Reject or Suspend Tariffs filed by AT&T Corporation ("AT&T") and the Petition to Suspend for One Day and Set for Investigation filed by Time Warner Telecom Holdings Inc. ("Time Warner") with regard to the above captioned tariffs related to long term number portability ("LNP").¹ Specifically, Time Warner cites as the basis for its Petition its perception that these tariffs are unclear as to whether query charges will be assessed for queries associated with calls to NXXs designated as number portable in the Local Exchange Routing Guide ("LERG") prior to the first number in the NXX being ported. AT&T argues six points of contention: (1) the alleged inclusion of embedded costs as part of the cost methodology; (2) the alleged attempt to impermissibly recover seven years of LNP-related costs; (3) the assessment of query charges for queries associated with calls to NXXs that have been designated as number portable in the LERG, regardless of whether a number has been ported from that NXX; (4) the alleged failure to

¹ No other Petitions were filed opposing the immediate approval of the Pacific Bell and Southwestern Bell tariffs.

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justify non-recurring charges related to default query services; (5) the claim of excess cost recovery for operating expenses as it relates to Southwestern Bell Charts 1 and 2B and (6) the percentage adopted by Pacific Bell as its overhead factor.² SBC denies that its tariff filings are not in compliance in these respects with the requirements established by the Common Carrier Bureau in its Memorandum Opinion and Order adopted and released in this proceeding on December 14, 1998 ("Bureau Order") and the Commission in its Third Report and Order in this proceeding adopted on May 5, 1998 and released May 12, 1998 ("Cost Recovery Order") relative to the issues raised by Petitioners. As set forth fully below, SBC is seeking to recover only those costs related to LNP to which it is entitled under the Cost Recovery Order and has provided the Common Carrier Bureau with the cost data and other information it requires in support of this recovery.

I. NEITHER SOUTHWESTERN BELL NOR PACIFIC BELL ARE SEEKING TO IMPERMISSIBLY RECOVER EMBEDDED COSTS.

AT&T alleges that both Southwestern Bell and Pacific Bell are seeking to impermissibly recover embedded costs rather than "new costs" directly related to LNP.³ To the contrary, the charge which is the result of the cost models employed, only recovers the direct incremental costs associated with implementing LNP and querying the LNP data base in the course of routing calls to NXXs designated as number portable in the LERG. Southwestern Bell's and Pacific Bell's investments and associated operating expenses per query, developed through the Switching Cost Information System ("SCIS")

² AT&T further attaches as Exhibit 1 its Opposition to Direct Cases filed in relation to various LNP tariffs, including Pacific Bell Tariff F.C.C. No. 128, Transmittal Nos. 1927 and 1973 and Southwestern Bell Tariff F.C.C. No. 73, Transmittal Nos. 2638 and 2694, dated July 10, 1998, and as Exhibits 2 through 4 written correspondence evidencing ex parte contacts in this regard. SBC believes that the issues raised therein have already been sufficiently addressed and discounted by SBC in its ex parte contacts in this proceeding as well as in its Consolidated Response of Southwestern Bell Telephone Company and Pacific Bell to Order Designating Issues for Investigation, filed July 1, 1998 and the Rebuttal of Southwestern Bell Telephone and Pacific Bell, filed July 17, 1998 in the related proceeding. These prior filings and contacts are hereby referenced and incorporated herein as part of the instant pleading.

³ AT&T Petition, p. 6.

and the Common Channel Switching Cost Information System ("CCSCIS") cost models, represent the forward-looking incremental costs associated with the demand placed on the Signaling System 7 ("SS7") network by the next LNP query. As stated in Southwestern Bell's Appendix E, page 2:

"The costs derived from SCIS and CCSCIS investments are recognized as the way to represent the advancement costs of "lumpy" investment (i.e., an entire STP or link is purchased, not just investment needed per query). These costs then are the advancement costs created by each query."

The cost model employed is the same cost model approved by the Commission in the Total Element Long Run Incremental Cost ("TELRIC") cost proceeding.⁴

Moreover, AT&T's assertion that "...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 queries..." is based upon the misimpression that Pacific Bell is somehow passing on to other carriers inappropriate internal costs. Southwestern Bell and Pacific Bell incur costs for their own internal queries in the same manner as costs are incurred for queries performed on behalf of other carriers. Additional investments in their SS7 networks were required to handle all LNP queries. Southwestern Bell and Pacific Bell are entitled under the Cost Recovery Order to recover the costs for these internal LNP queries through the Basic SPNP Service end user charge.

II. NEITHER SOUTHWESTERN BELL NOR PACIFIC BELL ARE SEEKING TO IMPERMISSIBLY RECOVER LNP EXPENSES OUTSIDE OF ANY COMMISSION MANDATED TIMEFRAME.

AT&T asserts that Southwestern Bell and Pacific Bell are impermissibly seeking to recover seven years of LNP costs.⁵ While it is agreed that the costs for end-user charges are to be amortized over a five-year period;⁶ the time during which recoverable

⁴ See, Paragraph 674 of the First Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98 and 95-185, (rel. August 8, 1996).

⁵ AT&T Petition, pp. 6-7.

⁶ Bureau Order, ¶ 51.

costs are incurred is not limited to this same time period either by the Bureau Order or the Cost Recovery Order.

Southwestern Bell and Pacific Bell are entitled to recover those costs which (1) would not have been incurred "but for" their provision of LNP and (2) were actually incurred in direct support of the provision of LNP.⁷ In adopting this two-prong test, the Bureau rejected as "flatly contradictory" previously advanced arguments that only costs incurred within a certain time period should be eligible for recovery.⁸

Both Southwestern Bell and Pacific Bell incurred the majority of their LNP-related expenses in 1997 and 1998⁹ in order to implement LNP within the Commission prescribed timeframes in 1998. Yet, the earliest date they could begin assessing end user charges, which are to be billed over a five-year period, is February 1, 1999.¹⁰ Southwestern Bell and Pacific Bell are not seeking to recover the costs of implementing LNP over a seven year period and are amortizing all LNP-related costs over five years after being levelized using the Commission allowed rate of 11.25%.¹¹ Simply put, Southwestern Bell and Pacific Bell are compliant with the Bureau's Order in that neither company is recovering any costs after the five year period established for recovery through charging its end user charge.

III. THE QUERY CHARGES INCLUDED IN THE TARIFFS OF SOUTHWESTERN BELL AND PACIFIC BELL ARE CONSISTENT WITH THE COST RECOVERY ORDER.

AT&T and Time Warner continue to argue that query charges should not be assessed unless a call terminates to an NXX from which at least one number has been ported.¹² Indeed, AT&T initially goes so far as to state that the "Commission's LNP

⁷ Bureau Order, ¶ 10.

⁸ Bureau Order, ¶ 17.

⁹ See Chart 2A of both tariff filings.

¹⁰ Cost Recovery Order, ¶ 142.

¹¹ Cost Recovery Order, ¶ 143.

¹² AT&T Petition, pp. 7-10; Time Warner Petition, pp. 1-2.

Orders" prohibit the assessment of such charges in any other situation.¹³ Yet, AT&T in its argument does not cite any Commission prohibition of this nature; rather, in contradiction of its own assertion, it states that this issue has yet to be resolved.¹⁴

Southwestern Bell and Pacific Bell believe this issue has already been resolved by the Commission in its Cost Recovery Order. Paragraph 15 clearly and unequivocally states, "Once number portability is available for an NXX, carriers must 'query' all interswitch calls to the NXX to determine whether the terminating customer has ported the telephone number." In paragraph 46 of this same Order, the Commission reiterates its conclusion, stating, "...long-term number portability requires N-1 carriers to incur query costs for all interswitch calls to an NXX once number portability is available for that NXX, whether or not the terminating customer has ported a number."

In addition, in their prior filings, Southwestern Bell and Pacific Bell described in detail the appropriateness of such charges. Once an NXX is designated as available for portability in the LERG, any competitive local exchange carrier ("CLEC") may require an incumbent local exchange carrier ("ILEC") to port the first number within that NXX within five days and all subsequent numbers within three days. The CLECs have required that all NXXs within selected switches and all new NXXs added to selected switches within an MSA be made portable. At a minimum, due to the complexity and scope of the work that must be performed, the ILECs must begin to translate their networks. As a result, they must query the LNP database well before the "first port" order is received if the required work is to be completed in the five day interval prescribed by the industry. Therefore, charging for these required queries in advance of the first port is reasonable and appropriate.

¹³ AT&T Petition, p. 7.

¹⁴ AT&T Petition, p. 8.

As stated in Appendix C of Southwestern Bell's Transmittal No. 2745 and Pacific Bell's Transmittal No. 2029, both companies "will begin activation (and thus queries) once a code is listed in the LERG as portable."

IV. THE ASSESSMENT OF A NONRECURRING CHARGE FOR DEFAULT QUERY SERVICE IS JUSTIFIED.

AT&T argues that Southwestern Bell and Pacific Bell should not be permitted to assess a nonrecurring charge relating to default query services.¹⁵ However, inherent in AT&T's argument is the assumption that this charge will be a recurring, rather than a nonrecurring, charge. There is no valid basis for this assumption. It is the intent of Southwestern Bell and Pacific Bell to bill this charge one time or, if the carrier chooses never to arrange for query service, one time each month until the carrier does prearrange for query service. The carrier may pre-arrange for query service on a prospective basis through the SBC companies' SPNP Query-Prearranged tariffs in which case it will not incur this charge. The contested charge is deemed to be a nonrecurring charge because it is believed that once an N-1 carrier is aware that queries associated with its calls are being handled by the local exchange carrier on a "default" basis, an N-1 carrier will make arrangements to have the ILEC perform its queries on a pre-arranged basis, in which case it would be charged one time only. In the cases of an N-1 carrier that consciously chooses not to prearrange for its query service, and defaults its queries month after month the ILEC has little choice but to recover its costs to perform the additional steps required to track usage and bill the carrier. However, since there is no reason for the carrier not to pre-arrange for query services, and a clear advantage to do so, AT&T's argument in opposition to this charge is inconsequential.

The text explaining this nonrecurring charge was inadvertently omitted from the tariff filing. SBC is willing to revise the tariff language to clarify that the charge will only be billed to N-1 carriers who terminate traffic onto the network of either Southwestern Bell or Pacific Bell and have not performed their querying responsibility

¹⁵ AT&T Petition, pp. 9-10.

nor prearranged with either of these entities to perform queries on the N-1 carrier's behalf. This charge is not applied to N-1 carriers if no queries are received from the carrier and no bill is rendered.

V. THE SOUTHWESTERN BELL TARIFF IS NOT INCONSISTENT AS TO ITS REPRESENTATION OF OPERATING EXPENSES.

AT&T claims that the charts filed by Southwestern Bell in support of its operating expenses are inconsistent and result in an error of approximately \$39 million in excess costs.¹⁶ Rather than these charts being in conflict, it is a case of AT&T failing to read the charts carefully. Southwestern Bell is not over recovering the operating expenses associated with the End Office/Tandem investments and OSS investments shown on Charts 1 and 2A of its filing. These charts were developed in accordance with the Bureau Order.¹⁷ The operating expenses shown on Chart 1, Lines 13 and 17 and on Chart 2A, Lines 9 and 11 represent the annual levelized recurring expenses based on the Bureau's prescribed five year depreciation life associated with the End Office/Tandem investments and the OSS investments, including Chart 1, Lines 1 and 4 for their respective years. Chart 2B, Line 6, reflects the five-year levelization of these annual costs as required by the Bureau Order.

VI. THE INCREMENTAL OVERHEAD FACTOR UTILIZED BY PACIFIC BELL IS APPROPRIATE.

AT&T does not object to the overhead factor utilized by Pacific Bell based upon its method of calculation, but instead protests that it is higher than that employed by other ILECs.¹⁸ AT&T "strongly supports" the use of overhead allocation factors set by state commission for unbundled network elements as a guide for reviewing the reasonableness of incremental overhead allocations. Indeed in a prior AT&T filing with the

¹⁶ AT&T Petition, p. 12.

¹⁷ Bureau Order, ¶¶ 52-54.

¹⁸ AT&T Petition, pp. 12-13.

Commission, it took an even stronger position. As AT&T stated on page 6 of its Reply Comments dated September 16, 1998 in CC Docket No. 95-116:

"The incremental overhead figures established in UNE cost proceedings provide a reasonable benchmark estimate of the true overhead costs that the Commission should expect to find are created by LNP. The state commission decisions listed in Exhibit 2 applied a standard that is identical in all relevant respects to that established by the Cost Recovery Order: that is, they sought to determine the incremental overhead costs created by providing the facilities and services at issue..."

Despite this endorsement of the very approach utilized in determining the Pacific Bell incremental overhead factor, AT&T would have the Bureau disregard the result because it is higher than other ILEC's incremental overhead factors.

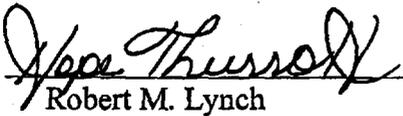
Paragraph 57 of the Bureau Order directs the ILECs not to rely upon a general overhead factor, but fails to set forth a methodology to be employed in determining incremental overheads. Since "overheads" are by their very nature general, and not incremental, Pacific Bell utilized that factor deemed under the Bureau Order to be "reasonable", i.e. the overhead allocation factor for unbundled network elements pricing pending before the California Public Utility Commission in Docket No. D98-02-106 as modified by Resolution T-16204. The fact that AT&T wishes that this factor was less does not constitute sufficient grounds for rejecting this factor as unreasonable or inappropriate, particularly given the lack of a clearly defined means for calculating an incremental overhead factor.

VI. CONCLUSION

SBC has complied with the requirements set forth in the Bureau Order as it relates to issues raised by the Petitioners. The rates contained as part of these tariffs are reasonable and recover those incremental costs directly attributable to LNP implementation and the ongoing costs of queries to secure routing information in connection with calls to NXXs that are designated in the LERG as number portable. For the reasons discussed herein, SBC respectfully requests the Bureau deny AT&T's Petition to Reject or Suspend and Time Warner's Petition to Suspend for One Day and Set for Investigation and allow the transmittals to take effect as scheduled.

Respectfully submitted,

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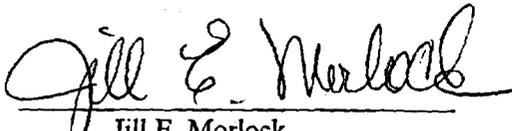
January 27, 1999

CERTIFICATE OF SERVICE

I, Jill E. Morlock, do hereby certify that on this 27th day of January, 1999, a copy of the foregoing "Reply" of SBC Communications, Inc. was served by facsimile and by U.S. first class mail, postage paid, to the parties listed below.

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