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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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

BELLSOUTH COMMENTS

BellSouth Corporation and BellSouth Telecommunications Inc. ("BellSouth") on behalf of its affiliated companies, hereby file these comments in support of the Applications for Review filed by Bell Atlantic, U S West and Cincinnati Bell ("Applications") and the Petition for Clarification filed by Ameritech ("Petition") regarding the Common Carrier Bureau's ("Bureau") Memorandum Opinion and Order ("*Cost Classification Order*" or "*Order*") in the above referenced docket.

The Applications and Petition all demonstrate that the Bureau's *Cost Classification Order* is potentially self-contradictory and possibly in dispute with the Commission's *Third Report and Order*¹ issued in this docket. BellSouth believes that the problems in the *Cost Classification Order* can be solved by clarifying some of the statements made by the Bureau in the earlier portion of the *Cost Classification Order*² that cast confusion on findings set forth in the later portion of the *Order*.³ If the statements in the earlier portion of the *Order*, however, are

¹ In the Matter of Telephone Number Portability, CC Docket No. 95-116, *Third Report and Order*, FCC 98-82 (rel. May 12, 1998) ("*Third Report and Order*").

² As discussed by Ameritech in its Petition these statements are found in Paragraphs 7-14 of the *Order*.

³ These findings are found in Paragraphs 23-30 of the *Order*.

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read to limit recovery of costs that are clearly recoverable pursuant to the *Third Report and Order*, the Commission should reverse the Bureau's *Order* as requested by the Applications.⁴

In the *Third Report and Order*, the Commission established the types of costs that a carrier can recover for the implementation of number portability. In establishing these costs, it determined that costs carriers "incur specifically in the provision of number portability services" are costs "directly related to providing number portability" and therefore recoverable through the federal cost recovery mechanism established in the *Third Report and Order*.⁵ The Commission recognized that carriers would incur some costs that would benefit services other than number portability, *i.e.*, joint costs that benefit other services or functions as well as number portability. For such costs the Commission found "that portion of a carrier's joint costs that is demonstrably an incremental cost carriers incur in the provision of long-term number portability" are directly related to providing number portability services.⁶ Accordingly, all such incremental costs are recoverable by the carrier pursuant to the cost recovery mechanism established in the *Third Report and Order*.

BellSouth agrees with Ameritech that the *Cost Classification Order* appears to provide a framework for recovery of number portability costs that is consistent with the *Third Report and Order*. BellSouth also agrees with Ameritech, however, that some of the statements in the *Order* could be read to conflict not only with the *Order* itself, but also with the rules established in the *Third Report and Order*. In its Petition Ameritech identified four areas in which statements in the Bureau's *Cost Classification Order* create uncertainty about the costs that a carrier providing

⁴ Thus, if the Bureau determines that the statements in Paragraphs 7-14 are controlling, thereby limiting the recovery of costs that were incurred for the provision of number portability, the Commission must reverse the Bureau's *Order* as exceeding the Bureau's authority.

⁵ *Third Report and Order* ¶ 72.

⁶ *Id.* ¶ 73.

number portability may recover. BellSouth concurs with Ameritech that these areas should be clarified to remove this uncertainty.

Although it does not specifically exclude any costs that were deemed recoverable in the *Third Report and Order*, if taken out of context, certain statements in the *Cost Classification Order* imply that some of these costs may not be incurred for the provision of number portability. All of these statements are made in the earlier paragraphs, Paragraphs 7-14, of the *Order*. For example, the first area of confusion described by Ameritech is simply the recoverability through the cost recovery mechanism established in the *Third Report and Order* of all incremental joint costs incurred for the provision of number portability. The Bureau's *Cost Classification Order* appears to provide an allocation methodology to allow carriers to recover the all such incremental costs in Paragraphs 23 – 29. Ameritech points out, however, that statements made in paragraphs 9, 12, and 14⁷ of the *Order* create doubt whether some of these costs may be recovered. The *Third Report and Order* clearly intends that the carrier may recover that portion of all incremental joint costs related to the provision of number portability. Accordingly, the Commission should remove any ambiguity created in the *Order* and clarify that all incremental costs incurred for the provision of number portability are recoverable.

Ameritech next identified potential confusion created by Paragraph 8 of the *Order*. It states that while some costs are for the provision of number portability, “others are incurred because of the impact of portability on existing systems for providing repair and maintenance services, 911 services, service ordering, and other network functions.” As Ameritech explains, this comment in the *Order* could be construed as disallowing recovery of relevant OSS costs. Once again, the *Third Report and Order* is clear that *all* incremental costs incurred for the

⁷ See Petition at 4-5.

provision of number portability are recoverable. Indeed, the Commission specifically noted in the *Third Report and Order* that the portion of the costs for “software generics, switch hardware, and OSS, SS7 or AIN upgrades” directly related to providing number portability may be recovered. The *Order* itself acknowledges this mandate from the Commission.⁸ Consequently, BellSouth supports Ameritech’s request that the *Order* be clarified to eliminate any confusion regarding the recovery of OSS costs.

The third point Ameritech identifies to be in need of clarification regards costs incurred for network upgrades necessary to provide number portability. The *Third Report and Order*, as does the *Cost Classification Order*, recognizes that the incremental portion of generic upgrades incurred due to number portability are recoverable.⁹ Paragraph 11 of the *Order*, however, suggests that costs for network upgrades are being recovered by under price cap or rate –of–return regulation and should not be allowed to be recovered under number portability charges. BellSouth concurs with Ameritech that this apparent contradiction within the *Order* should be clarified to be in accord with the *Third Report and Order*.

Finally, Ameritech’s Petition requests that the Bureau “clarify that incremental costs incurred to adapt and upgrade 911 equipment, facilities, databases and software required for the provision of [number portability] are recoverable through the [number portability] federal recovery mechanism.” Such costs appear recoverable based on the test set forth in Paragraph 29 of the *Order*. As discussed previously, however, the statements in Paragraph 8 of the *Order* cloud the issue. Just as with the sections discussed above, BellSouth agrees with Ameritech that the confusing language should be clarified.

⁸ *Cost Classification Order* at ¶ 26.

⁹ *Third Report and Order* at ¶ 73; *Cost Classification Order* at ¶ 27.

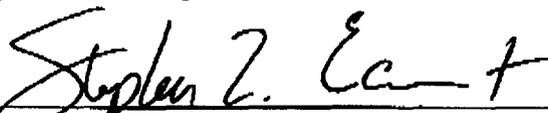
The Bureau's *Cost Classification Order* should be reviewed and clarified to eliminate the apparent confusion Ameritech identifies. The importance of such clarification was underscored this week when AT&T filed a Petition to Reject or Suspend¹⁰ the cost recovery tariffs of several carriers. In that Petition AT&T seized upon confusing language in the *Order*, identified by Ameritech in its Petition, in an attempt to support its argument that the recovery of certain number portability costs be denied. Clarification of the *Order* is therefore necessary to assure that carriers will be able to recover costs that are rightfully recoverable.

Conclusion

For the forgoing reasons, the clarification requested by Ameritech should be provided by the Bureau prior to the Commission's disposition of the pending Applications for Review. Following this clarification, the Commission should grant all pending Applications for Review to the extent the relief therein has not been made moot by the Bureau's response to the Ameritech Petition.

Respectfully submitted,

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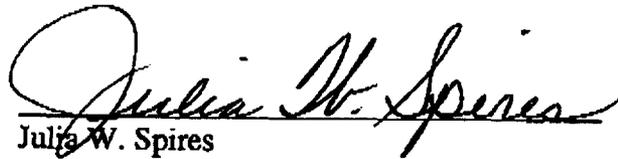
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Date: January 28, 1999

¹⁰ AT&T Petition to Reject or Suspend Tariffs filed In the Matter of Long-Term Telephone Number Portability Tariff Filings, CC Docket 95-116, January 21, 1999.

CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of January, 1999 serviced all parties to this action with the foregoing **COMMENTS**, reference docket CC 95-116, by hand service or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties as set forth on the attached service list.


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