

VI. CALCULATION OF OVERHEADS

A. Background

87. In the *Third Report and Order*, the Commission concluded that 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. 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.²⁷⁷ In the *Cost Classification Order*, the Bureau concluded that the use of incremental overhead allocation factors determined through a special study, such as the one employed by Ameritech, was reasonable and consistent with the *Third Report and Order's* prohibition against use of general overhead factors.²⁷⁸

88. Generally, overhead costs are joint and common costs that are not directly attributable to any particular service. In general, carriers conduct cost studies to develop an overhead factor that is applied to direct costs to estimate the dollar amount of joint and common costs. In past proceedings, we have recognized that a LEC's basis for use of a particular overhead factor may have been determined by a cost study.²⁷⁹ The *Cost Classification Order*, however, required that LECs demonstrate that any incremental overheads claimed are actually new overhead costs incremental to and resulting from the provision of long-term number portability.²⁸⁰ The Bureau also stated that unbundled network element (UNE) overhead factors could serve as a useful check on the reasonableness of the incumbent LECs' incremental overhead allocations.²⁸¹

89. In the *Designation Order*, the Bureau found questionable Pacific's use of a 21% allocation factor and SWBT's use of a weighted average factor of 15%, which are substantially higher than the overhead allocation factors used by other incumbent LECs,²⁸² in the absence of a special study or other information to confirm that these factors represent

²⁷⁷ *Third Report and Order*, 13 FCC Rcd at 11,740, para. 74.

²⁷⁸ *Cost Classification Order*, 13 FCC Rcd at 24,508, para. 33.

²⁷⁹ 800 Data Base Access Tariffs and the 800 Service Management System Tariff, *Order Designating Issues for Investigation*, 8 FCC Rcd 5132 (1993); 800 Data Base Access Tariffs and the 800 Service Management System Tariff, *Order*, 9 FCC Rcd 715 (1994); Guidance to Proponents of Cost Models in Universal Service Proceeding: Customer Location and Outside Plant, 12 FCC Rcd 18,340 (1997).

²⁸⁰ *Cost Classification Order*, 13 FCC Rcd at 24,508, paras. 31-33.

²⁸¹ *Cost Classification Order*, 13 FCC Rcd at 24,510, para. 37.

²⁸² For example, Ameritech used an overhead factor of 2.17%. See Ameritech, D&J for Transmittal No. 1186, "Long-Term Number Portability Common Cost Factor" Attachment at p.34.

incremental overhead attributable to long-term number portability.²⁸³ Accordingly, the Bureau designated for investigation whether Pacific's use of the overheads it proposed to state commissions for unbundled network elements in calculating its long-term number portability overhead factor was reasonable.²⁸⁴ Similarly, the Bureau designated for investigation the reasonableness of SWBT's use of a weighted average factor in calculating incremental overhead attributable to long-term number portability.²⁸⁵ To that end, the Bureau directed both Pacific and SWBT to demonstrate that the data used to derive the overhead factor was limited to the incremental overhead costs associated with the provision of the long-term number portability service, and directed them to calculate the overhead factor using an approach similar to that employed by Ameritech.²⁸⁶

B. Direct Cases

90. In their respective studies, Pacific and SWBT state that they continue to believe that calculation of the UNE overhead factor provides the most accurate means of identifying the appropriate long-term number portability incremental overhead factor.²⁸⁷ Pacific and SWBT assert that the UNE overhead factor was designed for wholesale offerings, has withstood state regulatory review and verification, and forecloses double recovery of costs because it establishes a relationship between dollars in accounts reflected in UNE studies and dollars in accounts considered shared or common. Pacific and SWBT further assert that the Shared and Common Factor or Common Cost Allocator (CCA) for UNE recognizes that common and shared dollars occur in proportion to the dollars identified in UNE studies.²⁸⁸ Both Pacific and SWBT recognize the Commission's preference for a special study to identify incremental overhead costs and maintain that the study they performed and presented in their Direct Cases is consistent with, but not identical to, the Ameritech study.²⁸⁹

91. Pacific indicates that it includes costs attributable to wholesale account teams that support CLECs and other carriers impacted by long-term number portability and costs for network services.²⁹⁰ SWBT indicates that it includes costs for sales, human resources, other general and administration and support assets that are attributable to long-term number

²⁸³ See *Cost Classification Order*, 13 FCC Rcd at 24,506, paras. 26-27.

²⁸⁴ *Designation Order*, 14 FCC Rcd at 3377, para. 27.

²⁸⁵ *Id.*

²⁸⁶ *Designation Order*, 14 FCC Rcd at 3377, para. 28.

²⁸⁷ Pacific Direct Case at 8; SWBT Direct Case at 9.

²⁸⁸ *Id.*

²⁸⁹ Pacific Direct Case at 9; SWBT Direct Case at 10.

²⁹⁰ Pacific Direct Case at 10.

portability.²⁹¹ Finally, Pacific and SWBT indicate that use of their Ameritech-like studies produces overhead factors of 8.2% and 8.1%, respectively.²⁹²

C. Oppositions

92. Ad Hoc challenges the overhead factors applied by Pacific and SWBT originally and as applied in their Direct Cases (per the Ameritech study model).²⁹³ Ad Hoc points out that neither Pacific nor SWBT provide the requisite background data needed to evaluate their calculations of overhead cost factors or proper application of Ameritech's cost model.²⁹⁴ Ad Hoc also notes that both Pacific and SWBT's overhead factors are still nearly four times that of Ameritech.²⁹⁵ With regard to Pacific's statement that its overhead represents "shared and common" costs which have "withstood state regulatory review and verification," Ad Hoc notes that the long-term number portability overhead costs are but a portion of the "shared and common" costs still under review by the California Public Utilities Commission.²⁹⁶ Ad Hoc argues that the Commission should require Pacific and SWBT to provide the requisite background data to verify their calculations of the overhead factors.²⁹⁷

93. AT&T argues that both Pacific and SWBT significantly overstate their claimed overhead costs.²⁹⁸ AT&T asserts that both carriers are seeking to recover an average of their overhead costs, rather than limiting their recoveries to only those incremental overhead costs created by long-term number portability.²⁹⁹ AT&T notes that unlike Ameritech, which derived a 2.17% factor by "limiting its claims to new overhead costs that were incremental to long-term number portability," Pacific and SWBT "simply divided the sum of all shared and common costs for organizations such as sales, accounting and finance, human resources, and other general and administrative work groups by their claimed total direct costs."³⁰⁰

²⁹¹ SWBT Direct Case at 10.

²⁹² Pacific Direct Case at 10; SWBT Direct Case at 10.

²⁹³ Ad Hoc Opposition at 32.

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ Ad Hoc Opposition at 31.

²⁹⁷ *Id.* at 32.

²⁹⁸ AT&T Opposition at 23.

²⁹⁹ *Id.* at 24.

³⁰⁰ *Id.*

D. Rebuttals

94. In their rebuttals, Pacific and SWBT argue that their approach to determining the overhead factor is indeed similar to Ameritech's approach. They state that, like Ameritech, their overhead factor was calculated based on identified work groups' total shared and common costs, including costs for activities which were identified as incremental to long-term number portability, divided by the long-run service incremental cost.³⁰¹

E. Discussion

95. On the basis of their initial tariff filings, and in light of evidence presented in the Direct Cases, Oppositions and Rebuttals, we conclude that the overhead costs claimed by Pacific and SWBT are unreasonably high.³⁰² In its original filing, Pacific indicated that it used the UNE overhead factor of 21% approved by the California Public Utility Commission (CPUC) to calculate the overhead costs it includes in its end-user and query services rates.³⁰³ Pacific offered no other information or cost support data to demonstrate that this factor recovers only incremental overhead costs for the actual provision of long-term number portability. SWBT, in its original filing, provided only a UNE Common Cost Allocation of 15% based on a weighted average of state-specific UNE common cost allocators.³⁰⁴ As directed by the *Designation Order*, both Pacific and SWBT conducted studies that they claimed were "similar" to Ameritech's method of calculating its overhead factor.³⁰⁵ In the case of Pacific, the revised calculation resulted in an approximately 60% reduction in the claimed long-term number portability shared and common costs, resulting in a long-term number portability incremental overhead factor of 8.2%.³⁰⁶ In the case of SWBT, a 48% reduction occurred in the claimed long-term number portability shared and common costs when it performed a cost study "similar" to Ameritech's, resulting in a long-term number portability incremental overhead factor of 8.1%.³⁰⁷

³⁰¹ SWBT and Pacific Rebuttal at 11.

³⁰² In their original tariff filings and Direct Cases, SWBT and Pacific failed to provide disaggregated data to support claimed overhead costs. In a subsequent *ex parte* filing, they provided additional overhead cost information to clarify how their claimed overhead costs are related to long-term number portability and to demonstrate that the claimed overheads are not claimed in any other cost category. See *Ex Parte* Letter from Christine Jines, SBC, to Magalie Salas, Secretary, FCC (May 24, 1999).

³⁰³ Pacific Transmittal No. 2029, D&J, at 14.

³⁰⁴ SWBT Transmittal No. 2745, at 14.

³⁰⁵ See SWBT Direct Case at 9-10; Pacific Direct Case at 8 -9. Ameritech's approach produced an overhead factor for Ameritech of 2.17%.

³⁰⁶ Pacific Direct Case at 10-11.

³⁰⁷ SWBT Direct Case at 9.

96. In its Opposition, Ad Hoc comments that even after allegedly performing an Ameritech-like method of calculating the overhead factor, Pacific and SWBT's overhead factors still exceeded the overhead factor calculated by Ameritech by a factor of four.³⁰⁸ Likewise, AT&T argues that even the revised calculations significantly overstate Pacific and SWBT's claimed long-term number portability-related overheads.³⁰⁹

97. We agree with Ad Hoc and AT&T that the original filings and the further information provided in Pacific and SWBT's Direct Cases and Rebuttals fail to adequately explain or justify the revised overhead factors. Although additional clarifying information subsequently submitted to support development of their overhead cost factors³¹⁰ persuades us that the reduced overhead factors obtained by applying an approach similar to Ameritech's are closer to the actual incremental overhead costs these LECs incur in the provision of long-term number portability, we continue to have significant concerns about the reasonableness of the incremental overhead factors claimed by Pacific and SWBT.

98. In particular, SWBT included in its calculation of the long-term number portability overhead factor certain administrative and operational costs which had not been shown to be an incremental portion of costs related to long-term number portability. SWBT stated that it had followed the Ameritech model but also included costs attributable to "Other General and Administrative," yet it failed to explain what activities performed by these work groups are specifically for the provision of long-term number portability.³¹¹ SWBT merely indicated that these expenses were incurred for long-term number portability but were not included in its support asset factor.³¹² This work group accounts for approximately 25% of the identified total long-term number portability overhead cost used to develop the long-term number portability incremental overhead factor. Based on our review, we are particularly concerned with the lack of information or data describing activities or functions performed by the work group identified as "Other General and Administrative." In the absence of such information, we can not determine whether these activities have more than a minimal or incidental involvement in supporting long-term number portability.

99. We find similar problems with Pacific's overhead cost justification. In addition to the accounts that paralleled those used by Ameritech and SWBT, Pacific included costs for network services that Pacific has not demonstrated were overhead costs incremental to the

³⁰⁸ Ad Hoc Opposition at 32.

³⁰⁹ AT&T Opposition at 23-24.

³¹⁰ See *Ex Parte* Letter from Christine Jines, SBC, to Magalie Salas, Secretary, FCC (May 24, 1999).

³¹¹ SWBT Direct Case at 10.

³¹² *Id.*

provision of long-term number portability.³¹³ We note that Pacific claimed large sums in the same account as a direct, itemized expense.³¹⁴ In sum, in the case of both Pacific and SWBT, we find that these carriers have failed to establish that all of their claimed overhead costs are in fact incremental overhead costs incurred for the actual provision of long-term number portability. We therefore conclude that the overhead costs claimed by both Pacific and SWBT in their original tariffs, filed on January 15, 1999, were unjust and unreasonable.

100. Upon further review of their claimed costs and in light of *ex parte* communications on the record, SWBT and Pacific further revised their overhead costs.³¹⁵ Accordingly, SWBT reduced its incremental overhead factor filed in its original filing by 61.05% to 5.84%. The reduction reflects the calculation of overhead costs using the method employed by Ameritech, as well as the removal of costs in Account No. 6728, Other General and Administrative. Likewise, Pacific reduced its incremental overhead factor filed in its original filing by 79.38 % to 4.33%. This reduction also reflects the calculation of overhead costs using the method employed by Ameritech, as well as the removal of costs in Account No. 6534, Network Services. We conclude that the revised incremental overhead factors result in reasonable incremental overhead costs, likely to have been incurred specifically in the provision of long-term number portability, and are consistent with the requirements of the *Third Report and Order* and the *Cost Classification Order*.³¹⁶

VII. ALLOCATION OF COSTS BETWEEN END-USER AND QUERY SERVICES

A. Background

101. In the *Third Report and Order*, we required carriers, when filing their number portability end-user and query service tariffs, to separate the portion of their carrier-specific costs attributable to their number portability services for end users from that portion attributable to their number portability query services for other carriers.³¹⁷ In the *Cost*

³¹³ Pacific Direct Case at 10.

³¹⁴ See Pacific Transmittal No. 2029, "Cost Overview Charts, Labor Costs" Chart 1, line 10.

³¹⁵ See Pacific Transmittal No. 2056; SWBT Transmittal Nos. 2764 and 2765.

³¹⁶ See *Third Report and Order*, 13 FCC Rcd at 11,740, para. 74; *Cost Classification Order*, 13 FCC Rcd 24,508, paras. 31-33.

³¹⁷ *Third Report and Order*, 13 FCC Rcd at 11,778-79, para. 147. Under the number portability architecture, the N-1 carrier is the entity transferring the call to the N, or terminating carrier. The N carrier is the entity terminating the call to the end user. See *Third Report and Order*, 13 FCC Rcd at 11,711, para. 15; see also *In re Telephone Number Portability*, Second Report and Order, 12 FCC Rcd 12,281, 12,323, n.207. An N-1 carrier may either perform queries on its own, or it may arrange for other carriers or third parties to perform those querying services. Thus, incumbent LECs have the opportunity to provide number portability services for their own end users (including query services on behalf of their end users' calls), as well as providing number portability query services for other carriers.

Classification Order, the Bureau provided specific, detailed guidance as to the proper method of allocating eligible number portability costs between the end-user and query service charges.³¹⁸ The Bureau determined the proper allocation of costs incurred for specific number portability services.³¹⁹ In particular, the Bureau stated that incumbent LECs should allocate any portion of eligible number portability costs that is incurred specifically to provide N-1 query services to the N-1 query services.³²⁰ Where the incumbent LECs intended to establish several types of N-1 query services, the Bureau directed that the LECs allocate the eligible number portability costs incurred specifically to provide each type of query service to that particular service.³²¹ Similarly, the Bureau directed the incumbent LECs to allocate costs incurred only to provide number portability functions to end users to the end-user charge.³²² The Bureau also determined the proper allocation of any remaining eligible number portability costs.³²³ Generally, the Bureau directed the incumbent LECs to allocate these remaining costs on the basis of the capacity requirements for each type of service.³²⁴ For incumbent LECs that elect to provide several types of N-1 query services, the Bureau directed that allocation of costs should be made to each service on the basis of the capacity requirements for the service.³²⁵

102. In the *Designation Order*, the Bureau designated for investigation whether Ameritech, GTE, Pacific, and SWBT's methods of allocating number portability costs between the end-user and query services charges were reasonable.³²⁶ The Bureau directed Ameritech, GTE, Pacific, and SWBT to provide more complete explanations of their bases for allocating number portability costs among services and why their methods are reasonable.³²⁷ In particular, the Bureau directed Pacific and SWBT to address whether it is reasonable to

³¹⁸ *Cost Classification Order*, 13 FCC Rcd at 24,510-12, paras. 38-44.

³¹⁹ *Id.* at 24,511, para. 40.

³²⁰ *Id.*

³²¹ *Id.*

³²² *Id.*

³²³ For costs to be eligible, they must be costs carriers incur specifically in the provision of number portability services, and not costs that carriers incur as an incidental consequence of number portability. See *Cost Classification Order*, 13 FCC Rcd at 24,501, para. 12.

³²⁴ *Cost Classification Order*, 13 FCC Rcd at 24,511, para. 41.

³²⁵ *Id.*

³²⁶ *Designation Order*, 14 FCC Rcd at 3379, para. 34.

³²⁷ *Id.* at 3379, para. 35.

assign all "implementation costs" to the end-user charge.³²⁸ The Bureau directed the LECs to submit as part of their direct cases the worksheet described in the *Cost Classification Order*, and specifically to include the allocation of each cost among the number portability services as required by the order.³²⁹ Finally, the Bureau directed the LECs to include sufficient data and calculations to show the assumptions used to allocate the costs of shared facilities, such as the costs of the shared regional databases and the links to those databases.³³⁰

B. Direct Cases

103. Ameritech claims that it allocated costs among number portability services based on expected capacity utilization.³³¹ Ameritech used its most current and accurate call volume data to project number portability end-user query capacity requirements.³³² Ameritech used busy hour call originating traffic to determine both database and signalling link capacity necessary to route calls in a number portability environment.³³³ Ameritech used monthly usage counts of other carriers because it did not have access to busy hour traffic data for these carriers. Ameritech converted these figures to projected busy usage by using a 27-day month and a standardized assumption that 10% of daily usage would occur in the busy hour. Using this methodology, Ameritech calculated the projected busy hour capacity requirement for query services for other carriers.³³⁴

104. GTE states that any costs incurred for a specific number portability service are dedicated to that service.³³⁵ GTE allocated all remaining costs based on busy hour capacity requirements for each type of query service.³³⁶ First, GTE calculated the total busy query capacity of all the number portability intelligent service control points. Second, GTE divided the busy hour queries for each query service by the total busy hour capacity to determine the percentage of busy hour capacity used. Finally, GTE multiplied this percentage by the dedicated number portability costs for each service to determine the amount to apply to each

³²⁸ *Id.*

³²⁹ *Id.*

³³⁰ *Id.*

³³¹ Ameritech Direct Case at 25.

³³² *Id.*

³³³ *Id.*

³³⁴ *Id.* at 25-26.

³³⁵ GTE Direct Case at 29.

³³⁶ *Id.* GTE did not show the different cost relationships for peak and off peak queries because it did not file a query service. *Id.*

service.³³⁷ GTE did not include any shared regional database costs in its calculations. Instead, GTE dedicated all costs of link facilities and regional databases to number portability services.³³⁸

105. Pacific and SWBT allocated all of their start-up number portability costs to the end-user charge instead of allocating any to the query service charge.³³⁹ Pacific and SWBT argue that if the query service rates were designed to recover any portion of the implementation costs of number portability, the query service rates would need to be reduced after the Commission's 60-month recovery period for number portability implementation costs.³⁴⁰ Pacific and SWBT further argue that all of the measurable benefits of being able to change carriers while keeping the same number accrue to the end user, and none of the implementation costs of the end-user functionality are impacted by the query process.³⁴¹ In addition, Pacific and SWBT argue that recovery of the non-recurring, non-volume sensitive costs through a carrier's query services would place a local exchange carrier (1) at a disadvantage in competing with other query service providers, and (2) at risk of not recovering its costs of implementation because of the demand fluctuation for query services.³⁴²

106. Pacific and SWBT's stated objective in allocating costs to individual rate elements is to place responsibility for related cost recovery on the cost causer.³⁴³ To accomplish this, Pacific and SWBT divided number portability costs into four categories, depending on whether the costs are recurring or nonrecurring and volume sensitive or non-volume sensitive.³⁴⁴ "Usage" costs (recurring/volume sensitive) are based on the amount of service consumed by the customer, and are recovered through a per-query charge.³⁴⁵ "Per Order" costs (non-recurring/volume sensitive) occur in connection with service establishment and do not vary based on how much service a customer consumes. Pacific and SWBT

³³⁷ GTE Direct Case at 30.

³³⁸ *Id.* at 31.

³³⁹ See Pacific Direct Case at 11-15; SWBT Direct Case at 11-15.

³⁴⁰ Pacific Direct Case at 12; SWBT Direct Case at 12.

³⁴¹ *Id.*

³⁴² Pacific Direct Case at 12; SWBT Direct Case at 12-13.

³⁴³ Pacific Direct Case at 12; SWBT Direct Case at 13.

³⁴⁴ Pacific Direct Case at 12-13; SWBT Direct Case at 13 .

³⁴⁵ Pacific Direct Case at 13; SWBT Direct Case at 13. Pacific and SWBT utilize three distinct rate elements to recover "Usage" costs from three groups: (1) the Pacific or SWBT network, (2) other N-1 networks that send unqueried calls to the Pacific or SWBT network, and (3) other N-1 networks that perform their own queries but use the Pacific or SWBT long-term number portability database to secure routing information. Pacific Direct Case at 14; SWBT Direct Case at 14.

recover these costs through a non-recurring charge associated with a particular service that a customer orders (such as the access order charge, SS7 translation charge, and billing charge).³⁴⁶ "Additive" costs (recurring/non-volume sensitive), including costs to deploy local service management systems (LSMSs)³⁴⁷ and number portability databases, occur across different customers, all of whom share responsibility as cost causers. Pacific and SWBT differentiate these costs so that they can be appropriately added to the end-user charge or query charge.³⁴⁸ Finally, "Start-Up" costs (non-recurring/non-volume sensitive) occur in connection with deployment of new network capabilities and are not generally sensitive to the number of customers which make use of the capability. Pacific and SWBT recover these costs from end users (as potential users of their network regardless of actual subscription).³⁴⁹ Pacific and SWBT reason that the measurable benefits of number portability accrue only to the local exchange customers served by switches that have been made number portable.³⁵⁰

C. Oppositions

107. Arch and PCIA assert that Ameritech, in the course of discussing the allocation of number portability costs among services, should have explained the reasonableness of allocating number portability costs to Commercial Mobile Radio Services (CMRS) Type 1 interconnection services.³⁵¹ Arch and PCIA argue that the Commission has authorized incumbent LECs to impose number portability end-user charges on carriers only when those carriers purchase unbundled network elements from the incumbent LECs or resell incumbent LEC services.³⁵² Therefore, Arch and PCIA assert that the Commission should declare that part of Ameritech's tariff unlawful.³⁵³ AT&T also asserts that Ameritech should not bill number portability surcharges to CMRS providers that utilize Type 1 interconnection trunks.³⁵⁴

³⁴⁶ Pacific Direct Case at 13, 15; SWBT Direct Case at 13, 15.

³⁴⁷ Carriers install local service management systems to receive updates from the regional databases on the numbers that have ported between carriers. See *Third Report and Order*, 13 FCC Rcd at 11,710, para. 14.

³⁴⁸ Pacific Direct Case at 13, 14-15; SWBT Direct Case at 13, 15.

³⁴⁹ Pacific Direct Case at 13; SWBT Direct Case at 13-14.

³⁵⁰ Pacific Direct Case at 13-14; SWBT Direct Case at 14.

³⁵¹ Arch and PCIA Comments at 1-2.

³⁵² *Id.* at 2-3.

³⁵³ *Id.* at 3.

³⁵⁴ AT&T Opposition at 35 (citing and joining with PCIA and Arch Petition for Partial Reconsideration of Order Designating Issues for Investigation in *Long-Term Telephone Number Portability Tariff Filings*, CC Docket No. 99-35, filed March 26, 1999).

AT&T recommends that the Commission prohibit such charges and require that any such charges imposed to date be refunded with appropriate interest.³⁵⁵

D. Rebuttals

108. Ameritech asserts that its monthly number portability end-user charge to CMRS providers' Type 1 DID/DOD Trunks is reasonable, and treats such providers in parity with all other end users of its end office services with telephone numbers and call origination capabilities.³⁵⁶ Ameritech argues that such charges are justified because the CMRS providers have the ability to port numbers between LECs, and utilize Ameritech's network to perform all necessary number portability functions for call routing and special features.³⁵⁷ Ameritech further argues that the CMRS providers' end-user customers also benefit by being able to take along their assigned telephone numbers (*i.e.*, the ones assigned to the CMRS providers' Type 1 DID/DOD trunks) when they switch to another local telecommunications service provider.³⁵⁸ Ameritech asserts that, even though CMRS providers are not yet required to provide number portability, there is no reason why a CMRS provider cannot port its assigned numbers to another wireline carrier.³⁵⁹ Finally, Ameritech argues that the CMRS providers' calls to number portable exchanges and to reach special services (such as Operator Services and Directory Assistance) use the incumbent LEC's number portability capability.³⁶⁰

E. Discussion

109. We find that Ameritech has followed the Commission and the Bureau's guidance by allocating its number portability costs across services in accordance with the capacity requirements of each service. We find unlawful, however, Ameritech's imposition of a number portability end-user charge on CMRS providers' Type 1 interconnection services. As Arch and PCIA argue, the *Third Report and Order* allows incumbent LECs to assess number portability end-user charges on other carriers only in instances where the incumbent LECs provide those carriers with number portability functionality, whether by resale or the sale of unbundled switch ports.³⁶¹

³⁵⁵ *Id.* at 36.

³⁵⁶ Ameritech Rebuttal at 21, 23.

³⁵⁷ *Id.* at 21-22.

³⁵⁸ *Id.* at 21.

³⁵⁹ *Id.* at 22.

³⁶⁰ *Id.* at 23.

³⁶¹ See *Third Report and Order*, 13 FCC Rcd at 11,778-79, paras. 146-147.

110. The Commission has previously analyzed the relationship between paging carriers and LECs in the context of access charges, and held that paging companies are co-carriers, not end users, and may not be assessed access charges.³⁶² In 1991, the Bureau analyzed whether subscriber line charges should be applied to mobile telephones, and determined that mobile telephone carriers were radio common carriers (RCC), not end users.³⁶³ The Bureau found that "[w]hen a call originates or terminates at a mobile phone, it is the person who places or receives that call, not the RCC, who is the end user . . . and the connection between the end user and the switch . . . is provided by the RCC."³⁶⁴ We held that "RCCs are not end users for the application of access charges and thus should not be assessed the end-user charges"³⁶⁵ The Commission recently upheld this reasoning as applied to paging carriers and concluded that LECs may not assess such access charges on paging companies because they are not end users.³⁶⁶

111. We believe that this analysis also applies to number portability because CMRS providers and paging providers are carriers, not end users.³⁶⁷ These carriers use their switches to connect calling parties to end users,³⁶⁸ and they must bear their own costs of operating in a number portability environment.³⁶⁹ Our number portability rules specify that monthly number portability surcharges may be assessed on end users, not carriers.³⁷⁰ If Ameritech seeks to charge CMRS providers for portability services, it is free to impose its query service charge for prearranged or default queries. Accordingly, we order Ameritech to cease assessing end-user charges on CMRS provider's Type 1 DID/DOD Trunks. We further order Ameritech to refund any end-user charges it has imposed on CMRS providers to date. Ameritech may offset these refunds by the value of the query services it has provided to these CMRS providers during this time.

112. We find that GTE has followed the Commission and Bureau's guidance by allocating its number portability costs across services in accordance with the capacity

³⁶² *In re Bell Atlantic Telephone Companies*, Order, 6 FCC Rcd 4794 (1991) (*Bell Atlantic Cellular*); *AT&T Corporation, MCI Telecommunications Corp. v. Bell Atlantic-Pennsylvania*, Memorandum Opinion and Order, 14 FCC Rcd 556 (1998) (*AT&T et al.*).

³⁶³ *Bell Atlantic Cellular*, 6 FCC Rcd at 4794-95, paras. 8-9.

³⁶⁴ *Id.*

³⁶⁵ *Id.*

³⁶⁶ *AT&T et al.*, 14 FCC Rcd at 582-83, paras. 57-59.

³⁶⁷ *Bell Atlantic Cellular*, 6 FCC Rcd at 4794-95, paras. 8-9.

³⁶⁸ *Id.*

³⁶⁹ *See Third Report and Order*, 13 FCC Rcd at 11,774-75, paras. 136-139.

³⁷⁰ 47 C.F.R. § 52.33(a)(1)(A).

requirements of each service. We note, however, that GTE has not yet filed a tariff for query services.³⁷¹ Therefore, we may reevaluate this issue of the allocation of costs between services should it file a query service tariff.

113. Based on their initial filings in this investigation, we find unlawful Pacific and SWBT's method of allocating their number portability costs among the end-user charge and query service charge. These carriers have not followed the Bureau's directive to allocate non-dedicated costs incurred to provide both query and end-user services based on the capacity requirements for each type of service.³⁷² The Bureau found system capacity requirements to be the primary driving force behind number portability costs.³⁷³ The Bureau further found that allocating eligible number portability costs between services on a capacity basis would encourage a more efficient rate structure, and thus lower total costs by encouraging efficiency.³⁷⁴ Thus, we find that Pacific and SWBT's initial allocation methodology violates the Bureau's directive.

114. We are not persuaded by Pacific and SWBT's Direct Cases or Rebuttal arguments in support of their allocation methodology. Pacific and SWBT argue that if the query service rates are designed to recover any portion of the implementation costs of number portability, the query service rates will need to be reduced after the five-year end-user charge recovery period.³⁷⁵ The argument fails, however, because Pacific and SWBT simply can use a standard depreciation period for the implementation costs recovered through their query rates, as Ameritech does.³⁷⁶ Although Pacific and SWBT argue correctly that end users benefit from being able to change carriers while keeping their number,³⁷⁷ it does not follow that all of the implementation costs of number portability will be used to port end-user numbers. The implementation costs also will be used to build the architecture vital to a carrier's ability to provide query services for other carriers. Nor are we persuaded by Pacific and SWBT's argument that allocating some implementation costs to the query charge will place incumbent LECs at a significant disadvantage in competing with other query service providers, or will

³⁷¹ See GTE Direct Case at 29.

³⁷² *Cost Classification Order*, 13 FCC Rcd at 24,511, para. 41.

³⁷³ *Id.*

³⁷⁴ *Cost Classification Order*, 13 FCC Rcd at 24,511, para. 42.

³⁷⁵ Pacific Direct Case at 12; SWBT Direct Case at 12. See also *Third Report and Order*, 13 FCC Rcd at 11,776, para. 142.

³⁷⁶ See Ameritech Wholesale Cost Study at 7-11. Moreover, the Bureau noted in the *Cost Classification Order* that the query service will last beyond the five-year number portability implementation cost recovery period applicable to the end-user charge. See *Cost Classification Order*, 13 FCC Rcd at 24,513, para. 47.

³⁷⁷ Pacific Direct Case at 12; SWBT Direct Case at 12.

prevent them from recovering their implementation costs.³⁷⁸ In the competitive market, all providers of query service have implementation costs to provide that service. Any entity competing in the market risks not recovering all of its costs due to demand fluctuation and competitive forces. Allocating some implementation costs to the query service charges should not affect Pacific and SWBT any more than other competitors in the query service market.

115. During the course of this investigation, in response to the Commission's concerns raised during *ex parte* communications on the record, Pacific and SWBT have revised their allocation methodology.³⁷⁹ We find that, as a result of these revisions, Pacific and SWBT have followed the guidance in Commission and Bureau orders by allocating their number portability costs across services in accordance with the capacity requirements of each service. Accordingly, we need not recalculate Pacific and SWBT's tariff filings with respect to their allocation of number portability costs between end-user and query services. We direct Pacific and SWBT to issue any refunds that result from their reallocation of costs between their end-user and query services, as reflected in their revised tariff submissions.

VIII. NONRECURRING CHARGES

A. Background

116. As discussed above, in the *Third Report and Order*, we limited the costs eligible for recovery through the new federal number portability cost recovery mechanism to "costs carriers incur specifically in the provision of number portability services, such as for the querying of calls and the porting of telephone numbers from one carrier to another."³⁸⁰ Pacific and SWBT's number portability tariffs included an alleged "nonrecurring" charge that would be imposed on a carrier during any month in which Pacific or SWBT performed default queries for that carrier.³⁸¹ Pacific's tariff also included an alleged "nonrecurring" charge each month for access to its number portability database when actual usage could not be measured.³⁸² In the *Designation Order*, the Bureau designated for investigation whether Pacific and SWBT's monthly "nonrecurring" query services charges are reasonable.³⁸³ The

³⁷⁸ Pacific Direct Case at 12; SWBT Direct Case at 12-13.

³⁷⁹ See Pacific Transmittal No. 2056; SWBT Transmittal Nos. 2764 and 2765.

³⁸⁰ *Third Report and Order*, 13 FCC Rcd at 11,740, para 72. See also *Cost Classification Order*, 13 FCC Rcd at 24,501, para. 12.

³⁸¹ See *Designation Order*, 14 FCC Rcd at 3380-81, 3382-83, paras. 38, 40, 43.

³⁸² *Id.* at 3383, para. 44.

³⁸³ *Designation Order*, 14 FCC Rcd at 3382-83, para. 43. Pacific's tariff states that several nonrecurring charges need to be applied to recover the costs of establishing a bill for default and prearranged queries and for establishing the customer connection to Signal Transfer Points (STPs) for database queries. Pacific Transmittal No. 2029, D&J, Section 2.1, "Cost Development" at 5. SWBT's tariff filing states that default billing charges

Bureau also designated for investigation whether Pacific's monthly "nonrecurring" charge for database access is reasonable.³⁸⁴ The Bureau directed Pacific to file in its Direct Case a full explanation of the circumstances under which this charge might arise and a justification of both its necessity and level.³⁸⁵ The Bureau specified that Pacific's explanation should include the reason usage measurement is not feasible and an explanation of why the proposed charge is an appropriate and reasonable proxy for measured usage.³⁸⁶ The Bureau also directed Pacific to file a full explanation and justification for the other proposed "nonrecurring" charge, identified as a cost component of prearranged queries,³⁸⁷ as well as proposed tariff language that will clarify precisely when and under what circumstances this charge will apply.³⁸⁸

B. Direct Cases

117. Pacific and SWBT argue that their nonrecurring charges are for default queries for which they have no mechanized means of tracking, posting, and associating usage with a customer account.³⁸⁹ Pacific and SWBT further argue that the fact that the same customer may have delivered unqueried traffic sometime in the past has no impact on the manual activity and the resulting costs Pacific and SWBT incur in completing the call.³⁹⁰ According to Pacific and SWBT, unless Pacific and SWBT are allowed to recover the additional nonrecurring costs for default queries from other carriers, those carriers will have little incentive to act in an efficient manner by prearranging query service.³⁹¹ As to its monthly charge of \$1,821 per customer for number portability database query service, Pacific asserts that it has not yet installed the equipment necessary to measure the actual usage of customers

were developed to recover costs associated with establishing a billing account to bill carriers for default queries handled by the SWBT database. SWBT Transmittal No. 2845, D&J, Appendix E, "Service Cost Development."

³⁸⁴ *Designation Order*, 14 FCC Rcd at 3383, para. 44.

³⁸⁵ *Id.*

³⁸⁶ *Id.*

³⁸⁷ Prearranged queries refers to an agreement between carriers, whether the LEC or another carrier that provides query services, for the handling of queries on an ongoing basis.

³⁸⁸ *Id.*

³⁸⁹ Pacific Direct Case at 15; SWBT Direct Case at 15.

³⁹⁰ *Id.*

³⁹¹ Pacific Direct Case at 16; SWBT Direct Case at 16. Pacific and SWBT assert that their nonrecurring charges for their number portability prearranged query service reflect the efficiency of handling query demand on a prospective basis. Pacific Direct Case at 16; SWBT Direct Case at 16.

subscribing to its service.³⁹² Therefore, Pacific developed a flat charge as a surrogate for monthly usage.³⁹³ To calculate this flat charge, Pacific first multiplied its five-year forecast for database queries by its charge per query. Pacific then divided this amount by sixty months to determine the average monthly revenue, which it divided by the average number of customers subscribing to its service.³⁹⁴ Once Pacific is able to record actual database usage, it plans to charge each customer a per-query, usage sensitive rate for all types of queries.³⁹⁵

C. Opposition

118. AT&T argues that Pacific and SWBT fail to document that they actually incur their purported nonrecurring costs on a monthly basis.³⁹⁶ AT&T believes that the purpose of Pacific and SWBT's nonrecurring charge is to force carriers to prearrange for query service.³⁹⁷ AT&T asserts that Pacific and SWBT provide exchange access to virtually all customers of their "default query" services, and will thus have no need to impose any nonrecurring charges related to billing.³⁹⁸ AT&T further asserts that, once Pacific and SWBT bill a carrier for a default query during one month, they cannot plausibly contend that they must set up a new billing system for that carrier each subsequent month.³⁹⁹ Finally, AT&T submits that no other incumbent LEC seeks to impose a nonrecurring charge similar to that of Pacific and SWBT.⁴⁰⁰

³⁹² Pacific Direct Case at 16. Pacific states that it is reviewing the feasibility of installing an SS7 link monitoring system, which would cost in excess of \$13 million. Pacific Direct Case at 16.

³⁹³ *Id.* at 17.

³⁹⁴ *Id.*

³⁹⁵ *Id.*

³⁹⁶ AT&T Opposition at 25.

³⁹⁷ AT&T Opposition at 25. AT&T further argues that Pacific and SWBT have failed to abide by their previous statements that they would allow carriers that prearrange for query services to avoid paying monthly nonrecurring charges. AT&T Opposition at 25-26.

³⁹⁸ *Id.* at 26.

³⁹⁹ *Id.*

⁴⁰⁰ *Id.*

D. Rebuttals

119. Pacific and SWBT assert that they have provided sufficient justification for their nonrecurring charges in their Direct Cases.⁴⁰¹ Pacific and SWBT argue that they have demonstrated both the need for and the reasonableness of the charges, and make no further arguments in their rebuttal.⁴⁰²

E. Discussion

120. Based on their original tariff filings, we find unreasonable Pacific and SWBT's imposition of a nonrecurring charge for each month in which they perform a default query for another carrier. Pacific and SWBT fail to document that they actually incur their purported nonrecurring costs each month in which they perform any default queries for another carrier.⁴⁰³ It appears, as AT&T points out, that the purpose of Pacific and SWBT's nonrecurring charge is to force carriers to prearrange for query service.⁴⁰⁴ Furthermore, we agree with AT&T that it is implausible that Pacific and SWBT will be required to set up a new billing system each month a customer uses their "default query" services, particularly since Pacific and SWBT provide exchange access services to virtually all of these carrier-customers.⁴⁰⁵

121. During the course of this investigation, in response to concerns raised in *ex parte* communications on the record, Pacific and SWBT have removed from their tariff filings the objectionable nonrecurring charge for default queries. In particular, their recent submissions establish that Pacific and SWBT will assess a nonrecurring charge on default queries only the first time a default query is performed for a carrier. No charge is assessed any subsequent time that Pacific and SWBT perform default queries for that same carrier. We find that the revised submission resolves our concerns, and those raised by parties in opposition, with respect to the nonrecurring charges assessed by Pacific and SWBT on default queries. Moreover, we conclude that it is consistent with the Commission's limitation of costs eligible for recovery through the new federal number portability cost recovery mechanism to "costs carriers incur specifically in the provision of number portability services, such as for the querying of calls and the porting of telephone numbers from one carrier to another."⁴⁰⁶ We direct Pacific and SWBT to refund with interest to customers any nonrecurring charges

⁴⁰¹ Pacific and SWBT Rebuttal at 12.

⁴⁰² *Id.* at 13.

⁴⁰³ See AT&T Opposition at 25.

⁴⁰⁴ *Id.*

⁴⁰⁵ AT&T Opposition at 26.

⁴⁰⁶ *Third Report and Order*, 13 FCC Rcd at 11,740, para 72. See also *Cost Classification Order*, 13 FCC Rcd at 24,501, para. 12.

assessed 1) during the months when Pacific and SWBT's tariffs were in effect and 2) for default queries that were performed both during these months and subsequent to the initial default queries for those customers.

122. Based on its initial tariff filing, we also question Pacific's fixed monthly charge of \$1,821 per customer for number portability database query service. A fixed charge assuming an average usage each month means that a carrier making thousands of queries each month will be charged the same as a carrier making only a few queries each month. We question whether this practice might serve as a barrier to market entry for small carriers, which would be forced to subsidize the monthly queries of larger carriers.

123. Based on the record before us, we recognize, however, that there may be competition in the provision of number portability services to local exchange carriers nationwide. At least two companies are offering number portability services to local exchange carriers on a nationwide basis.⁴⁰⁷ GTE advertises that a LEC can use its number portability service instead of negotiating with a different service provider for each region of the country.⁴⁰⁸ Similarly, Illuminet advertises that it offers its number portability services in all metropolitan statistical areas in the United States.⁴⁰⁹ Furthermore, we recognize that Pacific plans to charge each carrier-customer a per-query, usage sensitive rate once its network is able to record actual database usage.⁴¹⁰ Therefore, in the local exchange market served by Pacific, we conclude that small carriers are not placed at a competitive disadvantage by Pacific's fixed monthly charge because they may choose to obtain number portability service from another provider. Accordingly, we take no action against Pacific's fixed monthly charge of \$1,821 at this time. If, however, any carrier is being harmed by Pacific's charge, it may file a complaint under section 208 of the Act.⁴¹¹

⁴⁰⁷ In fact, both Pacific and SWBT allude in their Direct Cases to competition to provide query services in their local exchange market. Pacific and SWBT argue in their Direct Cases that allocating some implementation costs to the query charge would place incumbent LECs at a significant disadvantage in competing with other query service providers. See Pacific Direct Case at 12; SWBT Direct Case at 12-13.

⁴⁰⁸ See GTE Products and Services, LNP Wholesale Service (available at <http://www.gte.com/Wmktcs/Carrier/Lsps/Docs/l-lnp.html>).

⁴⁰⁹ See Illuminet Products and Services, Local Number Portability (available at <http://www.illuminet.com/local/lolocnum.htm>).

⁴¹⁰ See Pacific Direct Case at 17.

⁴¹¹ See 47 U.S.C. § 208.

IX. QUERYING AN NXX BEFORE A NUMBER IS PORTED**A. Background**

124. In the *First Report and Order*, the Commission stated that "there is no direct correlation between the number of queries made and the number of telephone numbers that have been forwarded because queries will be performed on all calls to a particular switch *once any single number has been transferred from that switch.*"⁴¹² In the *Third Report and Order*, the Commission concluded that "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."⁴¹³ The Commission also stated that a carrier must query all interswitch calls to an NXX once number portability is "available" to determine whether the terminating customer has ported the telephone number.⁴¹⁴

125. In the *Cost Classification Order*, the Bureau recognized that some incumbent LECs query all calls even in NXXs where no telephone number has been ported.⁴¹⁵ The *Cost Classification Order* further directed the incumbent LECs when filing their long-term number portability tariffs to demonstrate whether their demand assumptions included performing queries for all calls in NXXs where no number had been ported and to explain why it is necessary to query all calls in this situation.⁴¹⁶

⁴¹² *First Report and Order*, 11 FCC Rcd at 8463, para. 219 (emphasis added).

⁴¹³ *Third Report and Order*, 13 FCC Rcd at 11,729, para. 46.

⁴¹⁴ *Id.* at 11,711, para. 15.

⁴¹⁵ *Cost Classification Order*, 13 FCC Rcd at 24,513, para. 48.

⁴¹⁶ *Id.* at 24,513, para. 48. We note that the issue of performing queries for calls to NXXs where no number has been ported also was raised in other related number portability proceedings. USTA filed a petition for reconsideration of the *Third Report and Order* requesting that the Commission establish a specific procedure for opening an NXX code for portability. USTA requested that the Commission establish a cost recovery mechanism that precludes the incumbent LECs from charging carriers for querying functions prior to the implementation of number portability, and to clarify that incumbent LECs will not be required to perform query functions prematurely or unnecessarily. See Petition for Clarification and/or Reconsideration of the United States Telephone Association at 2 and 7, filed July 29, 1998 (*USTA Petition*); Comments of the United States Telephone Association at 2, filed September 3, 1998 (*USTA Comments*). Comcast Cellular Communications, Inc. filed a petition for reconsideration of the Commission's decision in the *Query Services Order*, regarding Bell Atlantic's interim query services tariff, urging the Commission to address the issue of whether assessing default query charges on calls to non-ported NXXs is reasonable. See Petition for Reconsideration of Comcast Cellular Communications, Inc. at 5, CC Docket No. 98-14, filed September 18, 1998. The Commission denied Comcast's petition in an order released December 17, 1998. In the *Matter of Comcast Cellular Communications, Inc. Petition for Reconsideration of Number Portability Query Services Order*, Memorandum Opinion and Order, 14 FCC Rcd 1664 (1998). The Commission concluded that the issue would be most appropriately handled after the filing of the incumbent LECs' number portability tariffs, when both end-user and query costs would be before

126. Pacific and SWBT's tariff filings, in response to the *Cost Classification Order*, stated that they provisioned their networks so that they will begin charging N-1 carriers a query charge for all unqueried calls to an NXX on the date an NXX is shown in the Local Exchange Routing Guide (LERG) to be number portable.⁴¹⁷ The demand calculations provided by Pacific and SWBT in their tariff filings included estimates for queries to NXXs where no number has been ported.⁴¹⁸ AT&T Communications and Time Warner filed petitions to suspend urging the Bureau to reject the tariffs of companies that impose default query charges on calls to NXXs with no ported numbers.⁴¹⁹ In response, SWBT argued that the issue of whether an incumbent LEC may query all calls to NXXs where a number has not been ported was resolved in the Commission's *Third Report and Order*.⁴²⁰ SWBT argued that the *Third Report and Order* requires carriers to query all interswitch calls to a NXX once number portability is available for that NXX in order to determine whether the terminating customer has ported a number.⁴²¹

127. In the *Designation Order*, the Bureau stated that it did not interpret the *Third Report and Order* to require carriers to query all calls where number portability is available, even in NXXs where no number has been ported.⁴²² The Bureau further found that the explanations contained in Pacific and SWBT's tariffs were not sufficient to explain why the companies must query each call to a particular NXX before a number has been ported from or to that particular NXX.⁴²³ The Bureau designated for investigation the issue of whether Pacific and SWBT's demand calculations, which include queries for calls to NXXs where no number has been ported, are reasonable.⁴²⁴ The Bureau also directed Pacific and SWBT to: (1) provide a detailed explanation as to why their systems are required to operate in that fashion; (2) state why no alternatives exist; and (3) explain the differences between their systems and those of other LECs that have not found it necessary to query all calls.⁴²⁵

the Commission for review.

⁴¹⁷ Pacific Transmittal No. 2029, D&J, Section 2.4, "Demand Development" at 9; SWBT Transmittal No. 2745, D&J, Section 2.4, "Demand Development" at 9.

⁴¹⁸ Pacific Direct Case at 19; SWBT Direct Case at 18.

⁴¹⁹ See AT&T Petition at 8; Time Warner Petition at 1-2.

⁴²⁰ SBC Reply Comments at 6-7.

⁴²¹ *Id.* at 6-7.

⁴²² *Designation Order*, 14 FCC Rcd at 3383, para. 46.

⁴²³ *Id.*

⁴²⁴ *Id.*

⁴²⁵ *Id.* at 3383-84, para. 46.

B. Direct Cases

128. In their Direct Cases, Pacific and SWBT argue that bills are rendered for queries to NXXs where number portability has been made available, as opposed to billing only for the NXXs where a number has actually been ported, because they should be permitted to bill for queries conducted on behalf of other carriers, at the time the queries occur.⁴²⁶ Pacific and SWBT state that carriers have requested the opening of Pacific and SWBT NPA-NXX codes in all number portability capable switches and have requested that Pacific and SWBT open all future codes in these offices within 45 days after the LERG is published or after the First Usage Notification (FUN) message is received.⁴²⁷ Pacific and SWBT contend that they have installed translations as part of the testing and deployment process for all Phase I through Phase V MSA switches, and that a change in their tariffs at this late date would require the removal of routing translations for thousands of NXXs in hundreds of switches, which would cause a delay in implementing number portability.⁴²⁸ Pacific and SWBT also argue that testing at the time the first number is ported doubles the translations and testing work, and the costs.⁴²⁹ Both Pacific and SWBT note that the incumbent LECs that are opening the codes within five days after the FUN message cannot perform queries for which the carriers are billed until after the five-day period, which creates a risk that the LEC will not be able to open the code within the required time period, may incur service failures, or experience service degradation.⁴³⁰ Pacific and SWBT further state that it is necessary to begin translations before the first number ports to ensure that the first order can be properly completed within the five-day time period.⁴³¹

C. Oppositions

129. Ad Hoc states that Pacific and SWBT's Direct Cases fail to support their contention that it is necessary to query calls to NXX's when no numbers have been ported.⁴³² Ad Hoc also states that the explanations provided do not show how this practice meets the two-part test set out in the *Cost Classification Order*, and fail to supplement the record with detailed or persuasive explanations.⁴³³ Ad Hoc argues that in NXXs that have no ported

⁴²⁶ Pacific Direct Case at 17; SWBT Direct Case at 17.

⁴²⁷ *Id.*

⁴²⁸ Pacific Direct Case at 18; SWBT Direct Case at 17.

⁴²⁹ *Id.*

⁴³⁰ Pacific Direct Case at 18; SWBT Direct Case at 17-18.

⁴³¹ Pacific Direct Case at 19; SWBT Direct Case at 18.

⁴³² Ad Hoc Opposition at 34, 36.

⁴³³ *Id.*

numbers, no number portability services are being provided and, thus, there is no justification for recovering the costs of queries performed in these NXXs as costs incurred for the provision of number portability.⁴³⁴ Ad Hoc further argues that queries to NXXs where no number has been ported have no value or purpose.⁴³⁵

130. AT&T states that Pacific and SWBT fail to provide any evidence to support their argument that the five-day period following the receipt of their first FUN message is an insufficient amount of time to open an NXX for portability.⁴³⁶ AT&T argues that other LECs have performed the necessary translations during the five-day period of time for over a year without experiencing any of the problems Pacific and SWBT predict.⁴³⁷ AT&T maintains that Pacific and SWBT do not explain why their networks are incapable of opening an NXX for portability within the five-day window following the FUN message.⁴³⁸ AT&T contends that the incumbent LECs also had notice for many months that the practice of performing these queries was contested by AT&T and have had ample notice of the queries for which they were permitted to bill pursuant to the Commission's number portability decisions.⁴³⁹ AT&T notes that Bell Atlantic was able to alter its tariff to stop billing for queries in NXXs in which no numbers had been ported at no cost to other carriers and to implement the tariff change in its network within the fifteen days between the tariff's filing date and its effective date.⁴⁴⁰ Finally, AT&T states that there is no need for Pacific and SWBT to alter any aspect of their number portability plans except their unlawful billing of other carriers for queries that have no purpose.⁴⁴¹

131. Time Warner argues that Pacific and SWBT have not provided a reasonable basis for charging for default queries for calls to NXXs with no ported numbers.⁴⁴² Time Warner also argues that Pacific and SWBT's practice of querying for calls to non-ported NXXs undermines the industry standard procedures, is inconsistent with the Commission's number portability policy, and is out of step with the practice of other carriers, such as Bell

⁴³⁴ Ad Hoc Opposition at 34.

⁴³⁵ *Id.* at at 35.

⁴³⁶ AT&T Opposition at 28.

⁴³⁷ *Id.*

⁴³⁸ *Id.*

⁴³⁹ AT&T Opposition at 29.

⁴⁴⁰ *Id.*

⁴⁴¹ AT&T Opposition at 30.

⁴⁴² Time Warner Opposition at 1.

Atlantic.⁴⁴³ Time Warner states that NANC and the regional operating teams have adopted a set of procedures for implementing number portability in a particular NXX which contemplates a two-part approach.⁴⁴⁴ Time Warner explains that the first step of the first phase of the approach is initiated when the carrier holding an NXX notifies the Number Portability Administration Center/Service Management System (NPAC/SMS) that number portability will be implemented for that NXX code.⁴⁴⁵ The NPAC/SMS updates the database and notifies all carriers of the update.⁴⁴⁶ The second step of the first phase is performed when the carrier that holds the number updates the LERG and then performs Global Title Translations. According to Time Warner, database queries are not necessary for calls to NXXs at this stage.⁴⁴⁷ Time Warner states that queries are necessary only after the second phase has been completed wherein calls have been ported to or from the NXX.⁴⁴⁸

132. Time Warner maintains that it was always contemplated that carriers could choose to update triggers and open routing tables before a number is ported.⁴⁴⁹ Time Warner argues that, by electing to charge for unnecessary default queries, that is, before a number has been ported, Pacific and SWBT are requiring N-1 carriers to upgrade their switches before industry standards require.⁴⁵⁰ Time Warner argues that this forces N-1 carriers to either pay the incumbent LEC for over-priced default queries or perform the upgrades themselves, which undermines the Commission's policy of limiting number portability-related switch upgrades.⁴⁵¹

133. Contrary to Pacific and SWBT's Direct Cases, Time Warner states that it is not true that the CLECs that have requested that all NXXs in a particular switch be upgraded have caused the incumbent LECs to incur the costs of number portability; rather it was Congress' mandate that number portability be implemented that caused the LECs to incur these costs.⁴⁵² Time Warner argues that Pacific and SWBT should not be allowed to use the

⁴⁴³ *Id.* at 2.

⁴⁴⁴ *Id.* at 3.

⁴⁴⁵ *Id.*

⁴⁴⁶ *Id.*

⁴⁴⁷ *Id.*

⁴⁴⁸ *Id.*

⁴⁴⁹ *Id.* at 4.

⁴⁵⁰ *Id.*

⁴⁵¹ *Id.* at 4-5.

⁴⁵² *Id.* at 6-7.

number portability code opening process to raise their competitors' costs.⁴⁵³ Time Warner also argues that Pacific and SWBT could have performed query set-up work for the end-office switches before a number was ported in the NXX and performed the tandem switch set-up work within the five-day period following the first ported number in the NXX.⁴⁵⁴ Time Warner notes that the unreasonableness of Pacific and SWBT's position is further demonstrated by Ameritech and Bell Atlantic's commitments to forego query charges until a number is ported in an NXX.⁴⁵⁵

D. Rebuttals

134. SBC filed a rebuttal on behalf of Pacific and SWBT arguing that the proper issue under consideration is not whether these costs are recoverable but when is billing to occur and who is to be billed.⁴⁵⁶ SBC states that any costs associated with uncompensated default queries can be recovered through the competitively neutral recovery mechanism established for number portability.⁴⁵⁷ SBC contends that the Commission recognized in the *Third Report and Order* that an incumbent LEC will incur costs in connection with queries in the process of provisioning the network with number portability.⁴⁵⁸ SBC states that this recognition is further reflected by the Commission's decision to allow carriers to assess end-user charges at a time when the switch is made number portability capable.⁴⁵⁹ SBC argues that billing these costs after a number is ported will result in an increase in costs attributable to the carrying charge on investment as well as billing adjustments to reflect the later billing.⁴⁶⁰

135. SBC argues that to refrain from billing in NXXs where no number has been ported, as AT&T proposes, would allow the costs incurred on behalf of a carrier in a pre-porting stage to be avoided entirely by that carrier and passed on through increased charges to the carriers that continue to require the incumbent LECs' querying services.⁴⁶¹

⁴⁵³ *Id.* at 7.

⁴⁵⁴ *Id.* at 8.

⁴⁵⁵ *Id.*

⁴⁵⁶ SBC Rebuttal at 13.

⁴⁵⁷ *Id.*

⁴⁵⁸ SBC Rebuttal at 14 (citing *Third Report and Order*, 13 FCC Rcd at 11,711, para. 15).

⁴⁵⁹ *Id.* at 14.

⁴⁶⁰ *Id.*

⁴⁶¹ *Id.*

SBC also argues that this approach would have the further impact of disadvantaging incumbent LECs' query charge competitors by increasing their costs and query charges.⁴⁶²

E. Discussion

136. The *Third Report and Order* states that "[o]nce number portability is available for an NXX, carriers must 'query' all interswitch calls to that NXX to determine whether the terminating customer has ported the telephone number."⁴⁶³ We clarify that this language does not require incumbent LECs to perform queries on calls to NXXs where numbers have not been ported.⁴⁶⁴ Moreover, we did not address the issue of cost recovery for calls to NXXs where numbers have not been ported in either the *First Report* or the *Third Report and Order*. We noted in the *First Report and Order* that once a number has been transferred from an NXX, queries will be performed for all calls to that NXX.⁴⁶⁵ In the *Third Report and Order*, we recognized that query costs would be incurred by carriers for calls to NXXs where number portability is available and at least one number has been ported even if the terminating or called customer's telephone number has not been ported.⁴⁶⁶ The relevant language in these orders anticipates that carriers will query calls to NXXs where numbers have been ported and does not focus on the carriers' obligation to query NXXs where numbers have not been ported.

137. We agree with Time Warner that Pacific and SWBT are not entitled to recover the costs of queries to NXXs where no numbers have been ported. Pacific and SWBT have not presented adequate explanations as to why their networks cannot accomplish the required translations within the time period established by the industry following receipt of the FUN message. We note that Pacific and SWBT participated as part of the industry process that established the five-day standard time for opening an NXX. They have not provided evidence to show that they presented information during the industry forum to develop the standards to show that they would not be able to meet the industry's standard. AT&T has presented unrefuted evidence that other incumbent LECs have performed the necessary translations and set-up work within the five-day period following the first ported number, but have not experienced the complications Pacific and SWBT anticipate.⁴⁶⁷ Pacific and SWBT also have

⁴⁶² *Id.*

⁴⁶³ *Third Report and Order*, 13 FCC Rcd at 11,711, para. 15.

⁴⁶⁴ *Designation Order*, CC Docket No. 99-35, DA 99-374 at 17-18.

⁴⁶⁵ *First Report and Order*, 11 FCC Rcd at 8463, para. 219. We note that the references in the *Third Report and Order* regarding queries to calls where number portability is "available" are to paragraph 219 of the *First Report and Order*. See *Third Report and Order*, 13 FCC Rcd at 11,711, para. 15.

⁴⁶⁶ *Third Report and Order*, 13 FCC Rcd at 11,729, para. 46.

⁴⁶⁷ AT&T Opposition at 28.

failed to contradict Time Warner's statement that queries are not necessary until a number has been ported even after Global Title Translations have been performed.

138. We disagree with SBC's assertion that we have sanctioned the practice of charging for default queries to NXXs where numbers have not been ported by allowing carriers to assess end-user charges where number portability is available but no porting has occurred.⁴⁶⁸ To the contrary, in the *Third Report and Order*, we determined that carriers should not receive payment from end users until end users are reasonably able to begin receiving the direct benefits of number portability.⁴⁶⁹ To achieve this goal, we allowed the monthly number-portability charge to begin no earlier than February 1, 1999, on a date the incumbent LEC carrier selects.⁴⁷⁰ We choose the February 1, 1999 start date for the federal end-user charge because we determined that by the end of 1998, under the implementation schedule we mandated for number portability, a large proportion of customers would reside in areas where number portability is available.⁴⁷¹

139. Neither SBC's Direct Case nor its Rebuttal demonstrates how N-1 carriers receive the direct benefits of default queries to NXXs where no number has been ported. We agree with Ad Hoc that in NXXs where no number has been ported, no number portability service is being provided and queries to such NXXs have no value or purpose.⁴⁷² We also agree with AT&T that such querying is unnecessary and that pursuant to operations flows for the code opening process, endorsed by the North American Numbering Council and subsequently approved by the Commission in the *Second Report and Order*,⁴⁷³ carriers have five days to activate the LNP trigger so that queries will be performed for calls terminating to numbers in an NPA-NXX once a first telephone number ports.⁴⁷⁴ Upon full consideration of all of the language in the *First Report and Order* and the *Third Report and Order*, we conclude that querying all calls and charging carriers prior to the date upon which a number is ported in an NXX is premature and inconsistent with our intent as stated in those orders that customers, in this instance carrier customers of the incumbent LEC, not be charged for

⁴⁶⁸ *SBC Rebuttal* at 14.

⁴⁶⁹ *Third Report and Order*, 13 FCC Rcd at 11,776, para. 142.

⁴⁷⁰ *Id.*

⁴⁷¹ *Id.*

⁴⁷² *Ad Hoc Opposition* at 34-35.

⁴⁷³ *In the Matter of Telephone Number Portability*, Second Report and Order, 12 FCC Rcd 12,281 (1997) (*Second Report and Order*).

⁴⁷⁴ AT&T Opposition at 28 (incorporating by reference its petition to suspend the Pacific and SWBT tariffs at issue in this proceeding, together with all of the attachments thereto).

number portability until they are reasonably able to receive the benefits of that service.⁴⁷⁵ Upon full consideration of all of the language in the *First Report and Order* and the *Third Report and Order*, we conclude that querying all calls and charging carriers prior to the date upon which a number is ported in an NXX is premature, unnecessary to prevent potential service disruption, and, more importantly, without value or purpose. Therefore, LECs may not begin charging for queries to a particular NXX until a number has been ported in that NXX.

140. We recognize that carriers have incurred costs in modifying their networks to enable those networks to perform queries, and that these costs are not eliminated by our decision that queries should not be performed in an NXX where no numbers have been ported. We also recognize that when all calls are not queried, the demand assumptions go down. A decline in demand assumptions increases the query charge because the entire cost of the network and related modifications to enable the provision of querying service must be paid by fewer calls. On balance, however, we conclude that other carriers and end users should not be charged for querying until they will benefit from the querying service, that is until at least one number has been ported in the NXX in question.

141. During the course of the investigation, Pacific and SWBT revised their tariffs to remove from their demand assumptions queries to NXXs where no number has ported.⁴⁷⁶ The decrease in the number of queries results in an increase in Pacific's and SWBT's query charges; however, as noted above, query service customers will be charged only when they begin receiving benefits from Pacific's and SWBT's query services. We believe this result is more reasonable than one that requires query customers to pay a lower charge for a service without receiving benefits from that service. We find, therefore, that Pacific's and SWBT's revisions to their tariffs to remove queries to NXXs where no number has been ported are reasonable.

X. JURISDICTIONAL SEPARATIONS

A. Background

142. In the *Third Report and Order*, we found that section 251(e) authorizes the Commission to provide the distribution and recovery mechanism for all costs of providing long-term number portability.⁴⁷⁷ We concluded that an exclusively federal recovery mechanism for long-term number portability would minimize the administrative and enforcement difficulties that might arise were jurisdiction over long-term number portability

⁴⁷⁵ *First Report and Order*, 11 FCC Rcd at 8463, para. 219; *Third Report and Order*, 13 FCC Rcd at 11,729, para. 46.

⁴⁷⁶ See Pacific Transmittal No. 2056; SWBT Transmittal Nos. 2764 and 2765.

⁴⁷⁷ *Third Report and Order*, 13 FCC Rcd at 11,720, para. 29.

divided.⁴⁷⁸ The Commission noted that under the exclusively federal number portability cost recovery mechanism, incumbent LECs' number portability costs would not be subject to jurisdictional separations.⁴⁷⁹

143. The *Designation Order* noted that although the Commission established an exclusively federal recovery mechanism for long-term number portability in the *Third Report and Order*, some LECs may have included, or may be including, some or all of these costs in their jurisdictional separations procedures.⁴⁸⁰ The *Designation Order* further stated that, to the extent long-term number portability costs have been assigned to the intrastate jurisdiction, those costs also may have been recovered through intrastate rates.⁴⁸¹ Recovery in the federal jurisdiction may, thus, constitute double recovery.⁴⁸² Similarly, to the extent long-term number portability costs are assigned to the intrastate jurisdiction prospectively, and LECs seek to recover those costs through intrastate rates, recovery in the federal jurisdiction would constitute double recovery.⁴⁸³

144. In this light, the Bureau designated the issue of what separations treatment and what intrastate ratemaking treatment may have been or may be accorded long-term number portability costs.⁴⁸⁴ The Bureau directed each LEC to file an explanation of how prior year costs related to long-term number portability implementation were treated with respect to jurisdictional separations.⁴⁸⁵ The Bureau directed the LECs to: (1) demonstrate that the long-term number portability costs booked in past periods and included in the development of federal number portability charges have not been recovered already in the state jurisdiction; (2) explain how state ratepayers would be made whole if the Commission allows federal recovery of costs that have been assigned to the intrastate jurisdiction and included in state ratemaking processes; (3) explain how costs related to long-term number portability implementation would be treated prospectively with respect to jurisdictional separations; and (4) demonstrate that long-term number portability costs included in the development of federal number portability charges will not be recovered prospectively in the state jurisdiction.⁴⁸⁶

⁴⁷⁸ *Id.*

⁴⁷⁹ *Id.*

⁴⁸⁰ *Designation Order*, 14 FCC Rcd at 3385, para 50.

⁴⁸¹ *Id.*

⁴⁸² *Id.*

⁴⁸³ *Id.*

⁴⁸⁴ *Id.* at 3385-86, para. 51.

⁴⁸⁵ *Id.*

⁴⁸⁶ *Id.*

B. Direct Cases

145. In its Direct Case, Ameritech states that long-term number portability costs recovered through the federal mechanism were not, are not and will not be recovered through state rates.⁴⁸⁷ Ameritech states that it began incurring long-term number portability costs in 1997.⁴⁸⁸ Since that time Ameritech has been under price cap regulation in the federal jurisdiction and for the past two years its operations in its five state jurisdictions have been subject to alternative regulation.⁴⁸⁹ Ameritech claims that because it has not taken any exogenous adjustments for long-term number portability costs during the past two years, no existing state rate could have been increased to recover number portability costs.⁴⁹⁰ Ameritech further states that new regulated services are priced based upon Total Service Long-Run Incremental Cost (TSLRIC) and it only recovers its own incremental costs; thus, no new state rate can recover any costs that are properly assigned to long-term number portability.⁴⁹¹

146. GTE states that it has excluded expenditures associated with long-term number portability from state ratemaking components on its regulated books.⁴⁹² GTE states that procedures were put into place to track long-term number portability costs and entries are made to reverse these costs to "Other Deferred Charges" on the regulated balance sheet.⁴⁹³ GTE states that the Other Deferred Charges account is not a rate-base component for state ratemaking purposes and thus does not flow through the jurisdictional separations process, and both investment and expenses are considered in this entry.⁴⁹⁴ GTE further states that recovery of long-term number portability costs will be through the federal cost recovery mechanism and any forthcoming costs will be excluded from state ratemaking purposes.⁴⁹⁵ GTE asserts that end-user and switched access revenue associated with long-term number portability recovery are booked to separate revenue accounts.⁴⁹⁶ In addition, a separate expense account has been established and is used to offset the recovered revenue from the established Other

⁴⁸⁷ Ameritech Direct Case at 27-28.

⁴⁸⁸ *Id.*

⁴⁸⁹ *Id.*

⁴⁹⁰ *Id.*

⁴⁹¹ *Id.*

⁴⁹² GTE Direct Case at 21.

⁴⁹³ *Id.*

⁴⁹⁴ *Id.*

⁴⁹⁵ *Id.* at 31-32.

⁴⁹⁶ *Id.*

Deferred Charge account.⁴⁹⁷ GTE states that this explicit long-term number portability recovery mechanism will be discontinued when the Commission's prescribed time period for recovery has expired.⁴⁹⁸ GTE further states that both the end-user and switched access revenue accounts and any new established expense accounts are excluded from the separations process.⁴⁹⁹

147. SBC⁵⁰⁰ states that long-term number portability costs incurred prior to February 1, 1999 were accounted for in accordance with Part 32, Uniform Systems of Accounts for Telecommunications Companies, and Part 36, Jurisdictional Separations Procedures, of the Commission's rules, as well as Generally Accepted Accounting Principles.⁵⁰¹ SBC states that because the federal cost recovery mechanism for long-term number portability did not start until February 1, 1999 long-term number portability costs were not excluded from the separations process prior to that time.⁵⁰² SBC argues that even though these costs were not excluded from the separations process, they have not been recovered in intrastate rates.⁵⁰³ SBC states that Pacific is subject to Price Regulation with Sharing Plan, a form of capped rates for local exchange service, which went into effect in 1990 and was modified in October 1998,⁵⁰⁴ while SWBT's five states are subject to either Price Regulation or Alternative Regulation.⁵⁰⁵ With regard to Pacific, SBC states that during 1997 and 1998 California did not have a general ratemaking proceeding where the total intrastate costs were considered.⁵⁰⁶ In addition, none of the five states in which SWBT operates have had a general ratemaking proceeding where the total intrastate costs have been subject to a ratemaking in 1997 or 1998.⁵⁰⁷ SBC argues that the rates allowed under these alternative regulation plans do not

⁴⁹⁷ *Id.*

⁴⁹⁸ *Id.*

⁴⁹⁹ *Id.*

⁵⁰⁰ Pacific's and SWBT's Direct Cases concerning jurisdictional separations mirror each other; thus, Pacific and SWBT will be referred to collectively as SBC in this section. *See* Pacific Direct Case at 21-23; Southwestern Direct Case at 20-22.

⁵⁰¹ Pacific Direct Case at 21-23; Southwestern Direct Case at 20-22.

⁵⁰² *Id.*

⁵⁰³ *Id.*

⁵⁰⁴ Pacific Direct Case at 21-23.

⁵⁰⁵ SWBT Direct Case at 21.

⁵⁰⁶ Pacific Direct Case at 22.

⁵⁰⁷ Southwestern Direct Case at 21.

include long-term number portability costs.⁵⁰⁸ SBC further states that market-based rates for new/restructured services have been established in some states, but those rates have not been based on the use of cost factors that would have been affected by historic long-term number portability costs.⁵⁰⁹

148. Finally, SBC states that, under prior Commission rulings, the costs of long-term number portability cannot be directly assigned to the interstate jurisdiction; direct assignment is allowed only where specifically provided in the Commission's rules or where explicitly required by Commission order.⁵¹⁰ SBC states that neither the *Third Report and Order* nor subsequent orders on number portability costs state specifically that these costs are to be directly assigned to interstate rates, only that they are to be excluded from jurisdictional separations.⁵¹¹ Thus, SBC states that effective February 1, 1999 long-term number portability costs have been excluded from the separations process and that the associated interstate revenues are also being excluded.⁵¹² SBC asserts that beginning with the reports filed in April 2000 for the 1999 reporting period, long-term number portability costs and revenues will be included in the "All Other Adjustment" column of the ARMIS 43-01 and will not be included in the "Subject to Separations" account.⁵¹³ Thus, SBC states that long-term number portability costs will not be part of the jurisdictionally separate results and will not be shown in either interstate or intrastate jurisdiction.⁵¹⁴

C. Oppositions

149. In opposition, Ad Hoc states with respect to Ameritech and SBC that the mere existence of alternative regulation at the state level is meaningless, because number portability costs can be allocated and fully recovered under alternative regulation plans.⁵¹⁵ Ad Hoc states that number portability costs could be recovered through either increases in carriers' charges under the relevant plan or as offsets to decreases in other costs which would have otherwise produced a rate decrease.⁵¹⁶ Ad Hoc states that GTE fails to state whether its number

⁵⁰⁸ Pacific Direct Case at 21-23; Southwestern Direct Case at 20-22.

⁵⁰⁹ *Id.*

⁵¹⁰ *Id.*

⁵¹¹ *Id.*

⁵¹² *Id.*

⁵¹³ *Id.*

⁵¹⁴ *Id.*

⁵¹⁵ Ad Hoc Opposition at 36-39.

⁵¹⁶ *Id.*

portability costs were used to develop state rates before reversing these costs from intrastate recovery.⁵¹⁷ Ad Hoc states all four LECs fail to adequately explain or support their contentions concerning jurisdictional separations.⁵¹⁸

150. AT&T disputes SBC's contention that Commission orders allow LECs to wait until February 1, 1999 to begin removing long-term number portability charges from intrastate jurisdictions.⁵¹⁹ AT&T states that the only significance of the February 1, 1999 date is that it is the date upon which the Commission first allowed LECs to recover long-term number portability costs.⁵²⁰ AT&T states that even if SBC did not have general rate filings in 1997 or 1998 these carriers could have made the necessary adjustment to remove any revenues or costs associated with long-term number portability from their intrastate investments and expenses.⁵²¹ Moreover, AT&T argues that intrastate rate cases may make use of historical investment and expenses and the SBC LECs' intrastate figures are currently overstated by virtue of their inclusion of long-term number portability related costs.⁵²² AT&T argues that despite the fact that SBC and Ameritech were not subject to general ratemaking proceedings during 1997 or 1998, these carriers should make the appropriate accounting adjustments to remove these charges and associated revenues from their intrastate investments and expenses.⁵²³

D. Rebuttals

151. In rebuttal, Ameritech states that beginning February 1, 1999, it effectively removed the number portability costs prior to separations.⁵²⁴ Ameritech states that it did not recover number portability costs in either intrastate or interstate rates in 1997 or 1998.⁵²⁵ Ameritech states that all of its intrastate costs studies are based on forward-looking costs, and its rates are subsequently developed from those costs in accordance with price regulation rules within each state.⁵²⁶ Ameritech states that in no case does it use interstate costs to develop its

⁵¹⁷ *Id.*

⁵¹⁸ *Id.*

⁵¹⁹ AT&T Opposition at 32-34.

⁵²⁰ *Id.*

⁵²¹ *Id.*

⁵²² *Id.*

⁵²³ *Id.*

⁵²⁴ Ameritech Rebuttal at 19.

⁵²⁵ *Id.*

⁵²⁶ *Id.*

state rates.⁵²⁷ Furthermore, Ameritech states that each state in its geographic region has implemented a state price cap plan, with the sole exception of Michigan which has a state price regulation plan.⁵²⁸ Ameritech argues that under these region-wide systems of alternative regulation, it has not made any changes to state rates for the recovery of number portability since it began incurring number portability costs in 1997.⁵²⁹ Therefore, Ameritech contends that none of its state rates or price floors reflect any separated costs for number portability.⁵³⁰

152. Similarly, Ameritech states that it is regulated under federal price caps in all jurisdictions served by its operating companies.⁵³¹ The charges for each category and rate element under price caps are developed utilizing forward-looking costs. Ameritech states that the only exception to this rule is the common line cap element that is updated using separations revenue requirements.⁵³² Ameritech further states that the common line price cap rates were established prior to number portability deployment and can only be increased upon exogenous cost adjustments approved by the Commission.⁵³³ Ameritech states that no such adjustments have been authorized for number portability; thus, its interstate rates do not reflect separated number portability costs.

153. Moreover, Ameritech states that in response to the *Third Report and Order* directive that number portability costs would not be subjected to separations, it has proposed a procedure that removes number portability costs from the separation process.⁵³⁴ Under this procedure, Ameritech states that it will capture the number portability revenues in unique revenue sub-accounts.⁵³⁵ Ameritech states that the amounts recorded in these accounts will then be netted against the associated expense accounts prior to any jurisdictional allocation of the associated expenses.⁵³⁶ Ameritech states that the resulting reduction to the net booked amounts as a result of reducing the expenses will ensure that the revenue required is correct -

⁵²⁷ *Id.*

⁵²⁸ *Id.*

⁵²⁹ *Id.*

⁵³⁰ *Id.*

⁵³¹ *Id.*

⁵³² *Id.*

⁵³³ *Id.*

⁵³⁴ *Id.* at 21.

⁵³⁵ *Id.*

⁵³⁶ *Id.*

less the number portability costs.⁵³⁷ Based on this procedure Ameritech states that fears of double-recovery of these costs are groundless.⁵³⁸

154. GTE states that contrary to Ad Hoc's assertion it has not included number portability costs in its state rates.⁵³⁹ GTE reiterates that the number portability costs it tracks are reversed out of regulated investment and expense accounts to deferred charge accounts as part of the normal accounting process.⁵⁴⁰ GTE states that, as a result, the ending balances that are used for regulatory reporting purposes reflect the fact that its number portability costs are held in deferred accounts.⁵⁴¹ GTE argues that as these deferred accounts do not flow through the jurisdictional separations process they are not used as rate-base components for state ratemaking purposes.⁵⁴² Finally, GTE contends that because the accounting balances used for state regulatory reporting purposes do not contain number portability costs, it has not used these costs in the development of any state rates.⁵⁴³

155. SBC reiterates that neither Pacific or SWBT has had a general ratemaking proceeding where total intrastate costs have been subject to a rate of return process.⁵⁴⁴ SBC contends that no number portability costs have been recovered in the intrastate jurisdictions where Pacific and SWBT operate which would constitute double recovery. Moreover, SBC states that as some form of price capped rates has been adopted in all of its state jurisdictions, no local rates include number portability costs.⁵⁴⁵ SBC further argues that its intrastate rates lie within the purview of state jurisdictions and not that of the Commission; therefore, if the state commissions decide that an adjustment in their intrastate rates is necessary, appropriate action will be taken.⁵⁴⁶

⁵³⁷ *Id.*

⁵³⁸ *Id.*

⁵³⁹ GTE Rebuttal at 12.

⁵⁴⁰ *Id.*

⁵⁴¹ *Id.*

⁵⁴² *Id.*

⁵⁴³ *Id.*

⁵⁴⁴ Pacific and SWBT Rebuttal at 15-16.

⁵⁴⁵ *Id.*

⁵⁴⁶ *Id.*

E. Discussion

156. Upon review of the pleadings, we find that Ameritech and GTE have not included long-term number portability costs in the jurisdictional separations process. We note that, in accordance with the *Third Report and Order*, both Ameritech and GTE have developed procedures that will remove future number portability costs from the separations process.⁵⁴⁷ Ameritech specifically states that under its procedure it will capture number portability costs in unique sub-accounts and that the amounts recorded in these sub-accounts will then be netted against any associated expense accounts prior to any jurisdictional allocation of the expenses.⁵⁴⁸ Similarly, in its pleadings, GTE asserts that it has also developed an accounting tracking system which will remove all number portability costs from the jurisdictional separations process.⁵⁴⁹ Based on Ameritech and GTE's affirmative representations to the Commission that their long-term number portability costs have not been recovered through any type of intrastate rate making process, we find that no adjustments to their filings based on jurisdictional separations are required.

157. SBC, on the other hand, has not developed a procedure to remove long-term number portability costs from the separations process. Indeed, it maintained that it was not required to do so, and did not do so until February 1, 1999. We agree with AT&T, however, that the only significance of the February 1, 1999 date is that it is the date on which we first allowed incumbent LECs to recover long-term number portability costs from end users.⁵⁵⁰ We also clarify that although the *Third Report and Order* did not explicitly state that the number portability costs recovered through the end-user and query service charge were to be directly assigned to the interstate jurisdiction, that is the order's effect.⁵⁵¹ The order did find that the Commission has statutory authority over both intrastate and interstate number portability costs.⁵⁵² Furthermore, the *Third Report and Order* held that (1) the distribution and recovery mechanism for all the costs of providing long-term number portability would be "exclusively federal," and (2) incumbent LECs' long-term number portability costs would not be subject to jurisdictional separations.⁵⁵³ Thus we disagree with SBC's argument that our *Third Report and Order* did not require incumbent LECs to remove their long-term number portability costs from the separations process until February 1, 1999.

⁵⁴⁷ See Ameritech Rebuttal at 19; see also GTE Direct Case at 21.

⁵⁴⁸ See Ameritech Rebuttal at 19.

⁵⁴⁹ See GTE Direct Case at 21.

⁵⁵⁰ AT&T Opposition at 32-34.

⁵⁵¹ See Pacific Direct Case at 22; SWBT Direct Case at 22.

⁵⁵² *Third Report and Order*, 13 FCC Rcd at 11,719-20, para. 28.

⁵⁵³ *Id.* at 11,720, para. 29.

158. We note the assertion of Ad Hoc that Ameritech, GTE and SBC might have allocated long-term number portability costs to intrastate rates even under state alternative regulation plans.⁵⁵⁴ However, Ad Hoc has not offered any proof of its assertions. In addition, Ameritech, GTE, and SBC assert on the record that they have not included long-term number portability costs in their intrastate rates.⁵⁵⁵ These assertions are consistent with our finding in the *Third Report and Order* that long-term number portability costs would be recovered through an "exclusively federal" mechanism. Ameritech, GTE, and SBC's assertions may best be evaluated by state commissions in their own rate-making proceedings. In light of the affirmative representations made by Ameritech, GTE and SBC that they have not included long-term number portability costs in their intrastate rates, and in the absence evidence to the contrary, we will not make adjustments to these LECs' filings based on jurisdictional separations. If evidence is presented to the Commission that a LEC's long-term number portability costs recovered through the end-user or query service charge have also been recovered through intrastate rates, we will adjust the levels of that LEC's end-user or query service charges on a prospective basis to account for the double recovery, and will entertain any complaints for damages under sections 207 and 208 of the Act.⁵⁵⁶

XI. RATE PRESCRIPTION

A. Background

159. As discussed above, we hereby prescribe rates for Ameritech. Our authority to prescribe rates comes from the Communications Act, which provides in pertinent part that whenever, "after full opportunity for hearing, . . . the Commission shall be of the opinion that any charge . . . of any carrier or carriers is or will be in violation of any of the provisions of this Act, the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable charge."⁵⁵⁷ Courts have consistently found in the Act a Congressional intent to grant us broad discretion in "selecting methods . . . to make and oversee rates."⁵⁵⁸ In doing so, we may make any "reasonable selection from the available

⁵⁵⁴ See Ad Hoc Opposition at 36-39.

⁵⁵⁵ See Ameritech Rebuttal at 19-20; GTE Rebuttal at 12; Pacific and SWBT Rebuttal at 16.

⁵⁵⁶ 47 U.S.C. §§ 207, 208.

⁵⁵⁷ 47 U.S.C. § 205(a).

⁵⁵⁸ *MCI Telecommunications Corp. v. FCC*, 675 F.2d 408, 413 (D.C. Cir. 1982) (quoting *Aeronautical Radio v. FCC*, 642 F.2d 1221, 1228 (D.C. Cir. 1980), cert. denied, 451 U.S. 920 (1981)). See also *Western Union Int'l v. FCC*, 804 F.2d 1280, 1292 (D.C. Cir. 1986) ("The FCC's judgment about the best regulatory tools to employ in a particular situation is . . . entitled to considerable deference from the generalist judiciary"); *MTS and WATS Market Structure, Third Report and Order*, 93 F.C.C. 2d 241, 259 (1983) ("[A] prescribed rate is just and reasonable for purposes of Section 205(a) if it represents the best approximation of a rate that satisfies all statutory requirements that this Commission is capable of devising within a reasonable period of time").

alternatives."⁵⁵⁹ Rather than insisting upon a single regulatory method for determining whether rates are just and reasonable, courts and other federal agencies with rate authority similar to our own evaluate whether an established regulatory scheme produces rates that fall within a "zone of reasonableness."⁵⁶⁰ For rates to fall within the zone of reasonableness, the agency rate order must undertake a "reasonable balancing" of the "investor interest in maintaining financial integrity and access to capital markets and the consumer interest in being charged non-exploitative rates."⁵⁶¹

160. Our discretionary authority to prescribe rates for Ameritech based on the methodology described below is directly supported by the Supreme Court's decision in the *Permian Basin Area Rate Cases*.⁵⁶² In that decision, the Court upheld the Federal Power Commission's (FPC) decision to depart from its former practice of determining the reasonableness of natural gas producers' rates by examining the costs of each company on a case-by-case basis.⁵⁶³ The Court found that the FPC's decision to prescribe maximum area rates for interstate natural gas sales based on composite cost data obtained from published sources and from producers through a series of cost questionnaires fell within the "zone of reasonableness" required by the Natural Gas Act.⁵⁶⁴ The Court emphasized that the Natural Gas Act had conferred upon the FPC broad responsibilities to regulate interstate distribution of natural gas and that prescribing rates based on composite industry data was a valid exercise of the FPC's discretionary authority under the Act:

[T]he "legislative discretion implied in the rate making power necessarily extends to the entire legislative process, embracing the method used in reaching the legislative determination as well as that determination itself." It follows that rate-making agencies are not bound to the service of any single regulatory formula; they are

⁵⁵⁹ *MCI Telecommunications*, 675 F.2d at 413.

⁵⁶⁰ See, e.g., *FERC v. Pennzoil Producing Co.*, 439 U.S. 508, 517 (1979); *AT&T v. FCC*, 836 F.2d 1386, 1390 (D.C. Cir. 1988) (quoting *Jersey Cent. Power & Light v. FERC*, 810 F.2d 1168, 1177 (D.C. Cir. 1987)). See also *Wisconsin v. FPC*, 373 U.S. 294, 309 (1963); *FPC v. Natural Gas Pipeline Co.*, 315 U.S. 575, 585-86 (1942).

⁵⁶¹ *Jersey Cent. Power & Light*, 810 F.2d at 1177-78. See *Pennzoil Producing*, 439 U.S. at 517 (to fall within the zone of reasonableness, rates must be neither "less than compensatory" nor "excessive").

⁵⁶² *In re Permian Basin Area Rate Cases*, 390 U.S. 747 (1968); see also *Cable & Wireless v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999).

⁵⁶³ *Permian Basin Area Rate Cases*, 390 U.S. at 768-70.

⁵⁶⁴ *Id.* at 768-74. The Court noted that Congress had entrusted the regulation of the natural gas industry to the "informed judgment of the Commission," and stated that "a presumption of validity therefore attaches to each exercise of the Commission's expertise." *Id.* at 767.

permitted, unless their statutory authority otherwise plainly indicates, "to make the pragmatic adjustments which may be called for by particular circumstances."⁵⁶⁵

161. Additionally, our discretionary authority to prescribe rates based on a disallowance of costs that carriers have not adequately justified is directly supported by the decision of the Court of Appeals for the District of Columbia Circuit in *Southwestern Bell Tel. Co. v. FCC*.⁵⁶⁶ There, SWBT and other LECs petitioned for review of Commission orders regulating the LECs' rates for physical collocation service.⁵⁶⁷ The Commission had suspended, for a five-month period pending investigation, a portion of the LECs' rates attributable to overhead loadings.⁵⁶⁸ At the end of the investigation, the Commission disallowed certain direct costs that SWBT and Pacific incorporated into their respective rate bases because these carriers had not adequately supported the inclusion of these costs.⁵⁶⁹ The court upheld the Commission's authority to prescribe rates, stating that "the FCC did not abuse its discretion in finding that Pacific Bell had not made an adequate showing that the claimed access area costs constituted a direct cost of physical collocation."⁵⁷⁰

B. Discussion

162. For reasons discussed above, we have made disallowances in three areas of Ameritech's rate development: building loadings, OSS costs and signalling costs. In an *ex parte* letter,⁵⁷¹ Ameritech provided revised end-user and query services cost studies that reflect removal of the costs we disallowed, except for the disallowed OSS costs for LMOS and NSBD. Ameritech removed the disallowed costs on a state-by-state basis, using appropriate cost factors for each state. Ameritech's revised studies also included the additional new SS7 costs of necessary SSP and STP processor upgrades identified in the *ex parte*, which we allow as discussed in the Switching and Signalling Section, Section IV, above.

163. We examined Ameritech's revised end-user surcharge cost study and determined that removing the further OSS amounts that we disallowed would not affect the

⁵⁶⁵ *Id.* at 776-77 (citations omitted). The Court cited as precedent *Los Angeles Gas Co. v. Railroad Comm'n*, 289 U.S. 287, 304 (1933); *San Diego Land & Town Co. v. Jasper*, 189 U.S. 439, 446 (1903); *FPC v. Natural Gas Pipeline Co.*, 315 U.S. 474, 586 (1942).

⁵⁶⁶ *Southwestern Bell Tel. Co. v. FCC*, 168 F.3d 1344 (D.C. Cir. 1999).

⁵⁶⁷ *Southwestern Bell*, 168 F.3d at 1347.

⁵⁶⁸ *Id.*

⁵⁶⁹ *Id.* at 1347, 1354.

⁵⁷⁰ *Id.* at 1354.

⁵⁷¹ See *Ex Parte* Letter from James K. Smith, Ameritech, to Magalie Roman Salas, FCC (June 11, 1999).

final end-user rate. We therefore use the revised cost study to prescribe Ameritech's end user surcharge of \$0.28 per month.

164. We also examined Ameritech's wholesale queries cost study. The disallowed OSS costs were entirely allocated to end user service, so no adjustment is required here. The revised study produces an end office or tandem query rate of \$0.002002 and a database access query rate of \$0.001003. We prescribe these query rates.

165. Based on the entire record before us, we find that certain costs claimed in GTE Long-Term Number Portability Transmittal Nos. 271, 275, 1190, and 1196, Pacific Long-Term Number Portability Transmittal No. 2029, and SWBT Long-Term Number Portability Transmittal No. 2745, all filed January 15, 1999, with an effective date of February 1, 1999, are unjust and unreasonable and, accordingly, unlawful under section 201(b) of the Act.⁵⁷² We find, however, that the rates GTE, Pacific, and SWBT have established in GTE Long-Term Number Portability Transmittal Nos. 284 and 1208, filed June 17, 1999, with an effective date of June 24, 1999, Pacific Long-Term Number Portability Transmittal No. 2056, filed June 22, 1999, with an effective date of July 7, 1999, and SWBT Transmittal Nos. 2764 and 2765, filed June 21, 1999 and June 23, 1999, respectively, with an effective date of July 6, 1999, are just and reasonable and, therefore, lawful. We conclude that the revised rates established in GTE Transmittal Nos. 284 and 1208, Pacific Transmittal No. 2056, and SWBT Transmittal Nos. 2764 and 2765 are the reasonable rates that should have been in effect from the effective date of GTE's Pacific's, and SWBT's original number portability tariff transmittals. The rates established in these transmittals must therefore be used as the benchmark in calculating customer refunds as ordered below.⁵⁷³

XII. CONCLUSIONS AND ORDERING CLAUSES

166. For the reasons stated herein, **WE FIND** that the long-term number portability rates filed by Ameritech Operating Companies, as specified in Long-Term Number Portability Transmittal Nos. 1186, 1187 and 1204, that are subject to this investigation and identified in this Order, are unlawful.

167. Furthermore, **WE FIND** that the long-term number portability rates filed by GTE Systems Telephone Companies, as specified in Long-Term Number Portability Transmittal Nos. 271 and 275, and GTE Operating Companies, as specified in Long-Term Number Portability Transmittal Nos. 1190, 1196, that are subject to this investigation and identified in this Order, are unlawful. **WE FIND** that the long-term number portability rates of GTE Systems Telephone Companies, as specified in Long-Term Number Portability Transmittal No. 284, and GTE Operating Companies, as specified in Long-Term Number Portability Transmittal No. 1208, are lawful and reasonable.

⁵⁷² 47 U.S.C. § 201(b).

⁵⁷³ See *supra* Section XI.

168. Furthermore, **WE FIND** that the long-term number portability rates filed by Pacific Bell, as specified in Long-Term Number Portability Transmittal Nos. 2029 and 2051, and Southwestern Bell Telephone Company, as specified in Long-Term Number Portability Transmittal Nos. 2745 and 2761, are unlawful. **WE FIND** that the long-term number portability rates filed by Pacific Bell, as specified in Long-Term Number Portability Transmittal No. 2056, and Southwestern Bell Telephone Company, as specified in Long-Term Number Portability Transmittal Nos. 2764 and 2765, are lawful and reasonable.

169. Accordingly, **IT IS ORDERED** that Ameritech Operating Companies shall file tariffs within five business days of the release date of this Memorandum Opinion and Order, to become effective on one day's notice establishing the prescribed end-user and query services rates set forth in paragraphs 163 and 164 herein.

170. **IT IS FURTHER ORDERED**, that pursuant to sections 4(i), 4(j), 201(b), 202(a), 203(a), 204(b), 205, and 403 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j), 201(b), 202(a), 203(a), 204(b), 205, and 403, that Ameritech Operating Companies **SHALL CEASE** assessing end-user charges on Commercial Mobile Radio Service providers' Type 1 DID/DOD Trunks, and **SHALL REFUND** any end-user charges it has imposed on such providers up to and including the effective date of its tariff revisions as described above. Ameritech may offset these refunds by the value of the query services it has provided to these providers during this time.

171. **IT IS FURTHER ORDERED** that pursuant to sections 4(i), 202(b), 203, 204(a), and 205(a) of the Communications Act, 47 U.S.C. §§ 154(i), 201(b), 203, 204(a), 205(a), Ameritech Operating Companies **SHALL REFUND** to its customers with compounded daily interest, the difference between the actual local number portability revenues it obtained between February 1, 1999 and the effective date of tariffs filed in response to this Order, and the revenues it would have obtained during this period based on the rates prescribed herein. Interest shall be computed on the basis of interest specified by the United States Internal Revenue Service.

172. **IT IS FURTHER ORDERED** that, pursuant to section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), and section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the revision to Pacific Bell's Tariff F.C.C. No. 128, Transmittal No. 2056, and Southwestern Bell Telephone Company's Tariff F.C.C. No. 73, Transmittal No. 2765, **ARE SUSPENDED** for one day, and are included in this investigation.

173. **IT IS FURTHER ORDERED** that Pacific Bell and Southwestern Bell Telephone Company **SHALL FILE** supplements reflecting the one day suspension within five business days of the release of this Order. For this purpose, we waive sections 61.58 and 61.59 of the Commission's rules, 47 C.F.R. §§ 61.58, 61.59. Pacific Bell and Southwestern Bell Telephone Company should cite the "FCC" number on the instant Order as the authority for the filings.

174. **IT IS FURTHER ORDERED** that the GTE Telephone Operating Companies and the GTE System Telephone Companies shall file tariff revisions within five business days of the release date of this Memorandum Opinion and Order, to become effective on one day's notice, in order to advance the effective date of their end-user and query charges.

175. **IT IS FURTHER ORDERED** that pursuant to sections 4(i), 202(b), 203, 204(a), and 205(a) of the Communications Act, 47 U.S.C. §§ 154(i), 201(b), 203, 204(a), 205(a), GTE Systems Telephone Companies and GTE Telephone Operating Companies **SHALL REFUND** to their customers with compounded daily interest, the difference between the actual local number portability revenues they obtained between February 1, 1999 and March 3, 1999, and the revenues they would have obtained during this period based on the rates specified in GTE Systems Telephone Companies Long-Term Number Portability Transmittal No. 284 and GTE Operating Companies Long-Term Number Portability Transmittal No. 1208. Interest shall be computed on the basis of interest specified by the United States Internal Revenue Service.

176. **IT IS FURTHER ORDERED** that pursuant to sections 4(i), 202(b), 203, 204(a), and 205(a) of the Communications Act, 47 U.S.C. §§ 154(i), 201(b), 203, 204(a), 205(a), Pacific Bell and Southwestern Bell Telephone Company **SHALL REFUND** to their customers with compounded daily interest, the difference between the actual local number portability revenues they obtained between February 1, 1999 and the effective date of the rates established in Pacific Bell Long-Term Number Portability Transmittal No. 2056, and Southwestern Bell Telephone Company Long-Term Number Portability Transmittal Nos. 2764 and 2765, and the revenues they would have obtained during this period based on the rates specified in Pacific Bell Long-Term Number Portability Transmittal No. 2056 and Southwestern Bell Telephone Company Long-Term Number Portability Transmittal Nos. 2764 and 2765. Interest shall be computed on the basis of interest specified by the United States Internal Revenue Service.

177. **IT IS FURTHER ORDERED** that pursuant to sections 4(i), 4(j), 201(b), 202(a), 203(a), 204(b), 205, and 403 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j), 201(b), 202(a), 203(a), 204(b), 205, and 403, that Ameritech Operating Companies, GTE Systems Telephone Companies, GTE Telephone Operating Companies, Pacific Bell, and Southwestern Bell Telephone Company must submit their plans for issuing the refunds specified in the foregoing paragraphs to the Common Carrier Bureau for review and approval within 30 calendar days of the release of this Memorandum Opinion and Order.

178. **IT IS FURTHER ORDERED** that the Chief, Common Carrier Bureau, is **DELEGATED AUTHORITY** under section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, to review the refund plans filed by Ameritech Operating Companies, GTE Systems Telephone Companies, GTE Telephone Operating Companies, Pacific Bell, and Southwestern Bell Telephone Company, and any oppositions filed thereto, and to resolve any issues raised by those pleadings, and to direct Ameritech Operating Companies, GTE Systems Telephone Companies, GTE Telephone Operating Companies, Pacific Bell, and Southwestern Bell Telephone Company to issue refunds as appropriate.

179. **IT IS FURTHER ORDERED**, that the investigations and accounting orders imposed by the Common Carrier Bureau in CC Docket No. 99-35, *Long-Term Number Portability Tariff Filings*, Order Designating Issues for Investigation, 14 FCC Rcd 3367 (1999), with respect to the designated issues as discussed herein **ARE TERMINATED**.

180. **IT IS FURTHER ORDERED**, that the suspension of the long-term number portability rates in the of Ameritech Operating Companies, Transmittal Nos. 1186, 1187 and 1204; GTE Systems Telephone Companies, Transmittal Nos. 271 and 275; GTE Operating Telephone Companies, Transmittal Nos. 1190 and 1196; Pacific Bell, Transmittal Nos. 2029 and 2051; and Southwestern Bell Telephone Company, Transmittal Nos. 2745 and 2761, **ARE HEREBY VACATED**.

FEDERAL COMMUNICATIONS COMMISSION


Magalie Roman Salas *W7C*
Secretary

**CONSOLIDATED DISSENTING STATEMENT OF
COMMISSIONER HAROLD FURCHTGOTT-ROTH**

Re: Long Term Number Portability Tariff Filings of Ameritech Operating Companies, GTE System Telephone Companies, GTE Telephone Operating Companies, Pacific Bell, and Southwestern Bell Telephone Company; Long Term Number Portability Tariff Filings of U S West Communications, Inc. (CC Docket No. 99-35)

I respectfully dissent from these items terminating the Commission's investigations of the respective long-term number portability tariff transmittals filed by the above-captioned incumbent LECs.

A little more than one year ago, I expressed my concern that the cost recovery scheme adopted by the Commission for long-term number portability appeared to be a replay of the cost-based, rate-of-return regulation that had produced incentives for inefficient behavior.¹ At that time, I warned that this type of regulation burdens regulators as they are forced to review and to monitor countless and tedious records of costs.² The items released today are the result of just such a review. And to what end?

Countless hours of time have been spent by talented Commission professionals in this exercise. Many more hours have been consumed by representatives of the various carriers whose tariffs are at issue attempting to justify their costs. And for what?

Can any of us be certain that the respective rates in the tariffs approved or prescribed by the Commission today recover these costs perfectly? More likely, we can only be certain that these rates are not perfect, although not for a lack of effort. There are simply too many beans to count to do so without error. I am deeply troubled when resources are squandered in the futile search for an exact answer when an approximate one -- and one that would create incentives for efficient conduct -- is available for the taking.

I would rather be approximately right than exactly wrong. As I have stated previously, I believe that a better approach would be to establish a maximum amount that could be recovered for long-term number portability from a federal fee. If, through prudent management, a carrier kept costs below the federal cap, it would be rewarded for its efficiency. If a carrier's costs exceeded the federal cap, the carrier could seek recovery from appropriate state authorities. In either case, carriers would have a strong incentive to keep costs as low as possible to the benefit of consumers.³ Moreover, the Commission would be

¹ See Separate Statement of Commissioner Harold Furchtgott-Roth, Telephone Number Portability, Third Report and Order, 13 FCC Rcd 11,701, CC Docket No. 95-116 (1998).

² *Id.*

³ *Id.*

assured of reaching an approximate result without consuming valuable resources in a fruitless debate over minute levels of detail.

Finally, I write to express my concern about the procedural framework upon which these items are based. In today's orders, the *Commission* applies a standard established by the *Common Carrier Bureau*.⁴ I am distressed by a delegation of authority that leads to such upside-down results. I am particularly troubled by the application of the Bureau's standard when several carriers have sought review of this order, and those petitions remain pending before us. Although I withhold my comments on the merits of those proceedings, I express my concern for a procedure that I believe has been turned on its head.

⁴ See, e.g., Long Term Number Portability Tariff Filings of Ameritech Operating Companies, GTE System Telephone Companies, GTE Telephone Operating Companies, Pacific Bell, and Southwestern Bell Telephone Company, CC Docket No. 99-35, at para. 45 ("[Ameritech's] costs appear to be unrelated to the provision of number portability as defined in the *Third Report and Order* and the [Bureau's] *Cost Classification Order*.").