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

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In the Matter of	)	
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Telephone Number Portability	)	CC Docket No. 95-116
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MEMORANDUM OPINION AND ORDER ON RECONSIDERATION AND ORDER ON APPLICATION FOR REVIEW

Adopted: January 23, 2002 **Released:** February 15, 2002

By the Commission: Commissioner Copps approving in part, dissenting in part, and issuing a statement

Paragraph No.

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I. INTRODUCTION

1. On May 5, 1998, the Commission adopted the *Third Report and Order*[1] in this docket, implementing section 251(e)(2) of the Communications Act of 1934, as amended (the Act), with regard to the costs of providing local number portability. The *Third Report and Order*, among other things, determined that section 251(e)(2) requires the Commission to ensure that carriers bear the cost of providing long-term number portability on a competitively neutral basis for both interstate and intrastate calls. The *Third Report and Order* also determined that incumbent local exchange carriers (LECs) may recover carrier-specific costs of number portability through federally-tariffed end-user and query service charges.[2]

2. Eighteen parties filed petitions for reconsideration and clarification in response to the *Third Report and Order*. Thirteen parties filed oppositions or comments on the petitions, and

[1] *Telephone Number Portability*, Third Report and Order, CC Docket No. 95-116, 13 FCC Rcd 11701 (1998) (*Third Report and Order*).

[2] *Id.* at 11707, para. 9.

ten parties filed reply comments.[3] In this *Order*, we resolve the following issues raised in these filings regarding the rules adopted in the *Third Report and Order*. Specifically, we (1) affirm that the Commission has exclusive jurisdiction over the distribution and recovery of costs associated with intrastate and interstate number portability; (2) clarify that the local number portability administrator may assess shared costs on all eligible telecommunications carriers, not just carriers with existing long-term number portability contracts; (3) clarify that incumbent LECs must allocate their shared costs between the query service and end-user charges; (4) affirm the adoption of the end-user revenue allocator; (5) deny petitioners' request that costs associated with a number portability charge to carriers purchasing unbundled switching be calculated based on total element long run incremental cost (TELRIC);[4] (6) deny petitioners' request that costs for number portability be based on avoided costs;[5] (7) clarify that carriers may not recover number portability costs from other carriers through interconnection charges or resale prices; (8) clarify that as long as an incumbent LEC provides number portability functionality, it may assess the number portability end-user charge on resellers and purchasers of switching ports as unbundled network elements; (9) affirm that carriers not subject to rate-of-return regulation or price caps may recover their carrier-specific costs in any lawful manner consistent with their obligations under the Communications Act; (10) clarify that commercial mobile radio service (CMRS) providers are co-carriers, not end users, and, therefore, are not subject to an end-user charge; (11) clarify that carriers who offer Feature Group A access lines may assess an end-user surcharge on such lines; (12) affirm that Centrex lines may be assessed one end-user number portability charge per line and a Private Branch Exchange (PBX) trunk may be charged nine end-user number portability charges per PBX trunk; (13) affirm that Plexar may be assessed one number portability charge per line; (14) affirm that incumbent LECs may impose an end-user charge in service areas where the switch is number-portability-capable; (15) clarify that small and rural incumbent LECs that do not yet provide number portability functionality but provide service under Extended Area Service (EAS) arrangements may recover their N minus one (N-1) query and Number Portability Administration costs through end-user charges; (16) clarify that incumbent LECs may not begin billing carriers for N-1 queries until a number has been ported from an NXX; (17) clarify that after the five-year recovery period for implementation costs of number portability through the end-user charge, any remaining costs will be treated as normal network costs; (18) affirm that price cap LECs and rate-of-return LECs should treat the query services charge as a new service within the meaning of section 61.38 of our rules; and (19)

[3] A list of petitioners and commenting parties appears at Appendix A.

[4] We note that the Eighth Circuit has ruled that, while TELRIC is an acceptable method for determining costs, certain specific rules contained within the Commission's pricing rules are contrary to congressional intent. *Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 749-53 (8th Cir. 2000), *cert. granted sub nom., Verizon Communications v. FCC*, 531 U.S. 1124 (2001). The Eighth Circuit has stayed the issuance of its mandate, *Iowa Utils Bd. v. FCC*, No. 96-3321, *et al.* (8th Cir. Sept. 25, 2000), pending appeal before the Supreme Court, which has granted certiorari in the case. *Verizon Communications v. FCC*, 531 U.S. 1124 (2001). Accordingly, the Commission's rules continue in effect at this time.

[5] In *Iowa Utilities Bd. v. FCC*, *see* n. 4, *supra*, the Eighth Circuit concluded that section 252(d)(3) of the Communications Act requires costs that are actually avoided, not those costs that could be avoided, be excluded from wholesale rates offered to resellers. *Iowa Utilities Bd. v. FCC*, 219 F.3d at 755.

affirm our rules adopted in the *Third Report and Order* concerning levelized charges. We take this action toward the implementation of local number portability at the direction of Congress,[6] and apply the mandate of section 251(e)(2) in the most efficient manner possible.

3. In the *Third Report and Order*, the Commission delegated authority to the Common Carrier Bureau (Bureau) to determine appropriate methods for apportioning joint costs among portability and non-portability services, and to provide guidance to carriers before they filed their federal number portability tariffs.[7] On December 14, 1998, pursuant to delegated authority, the Bureau issued the *Cost Classification Order*.[8] The *Cost Classification Order*, among other things, provided guidance to incumbent LECs concerning: (1) the costs that are eligible for recovery through federal number portability charges established in the *Third Report and Order*; (2) the appropriate methodologies for determining the amount of eligible number portability costs; (3) advancement costs; and (4) allocation of these eligible costs between the end-user, pre-arranged and default query charges.[9]

4. In response to the *Cost Classification Order*, four parties filed petitions for clarification or applications for review. Four parties filed oppositions or comments and four parties filed replies. In this *Order*, we address all issues raised in these petitions. Specifically, we: (1) affirm that carriers may only recover carrier-specific costs directly relating to the provision of number portability; (2) affirm that carriers must distinguish clearly costs incurred for narrowly defined portability functions from costs incurred to adapt their systems to implement number portability; (3) affirm that costs carriers incur as an incidental consequence of number portability are ordinary costs of doing business and represent general network upgrades; (4) affirm the two-part cost recovery test; and (5) affirm that costs which do not meet the two-part recovery test may not be recovered through the number portability cost recovery mechanisms.

II. BACKGROUND

5. In the *Third Report and Order*, we concluded that section 251(e)(2) requires that carriers bear the following costs on a competitively neutral basis: (1) costs the LECs incur to meet the obligations imposed by section 251(b)(2); and (2) costs other telecommunications carriers, such as interexchange carriers (IXCs) and CMRS providers, incur for industry-wide solutions to provide local number portability.[10] We also held that the costs of establishing number portability

[6] Section 251(e)(2) of the Act requires that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." 47 U.S.C. § 251(e)(2).

[7] *Third Report and Order*, 13 FCC Rcd at 11740, para. 75.

[8] *Telephone Number Portability Cost Classification Proceeding*, CC Docket No. 95-116, Memorandum Opinion and Order, 13 FCC Rcd 24495 (CCB 1998) (*Cost Classification Order*).

[9] *See Cost Classification Order*, 13 FCC Rcd at 24498, para. 5.

[10] *Third Report and Order*, 13 FCC Rcd at 11723-24, para. 36. Section 251(e)(2) requires that the costs of establishing number portability be "borne by all telecommunications carriers on a competitively neutral basis." 47 U.S.C. § 251(e)(2). Section 251(b)(2) requires all LECs "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." 47 U.S.C. § 251(b)(2).

include: (1) costs associated with the creation of the regional databases to support number portability;[11] (2) costs associated with the initial upgrading of the public switched network; and (3) ongoing costs of providing number portability, such as the costs involved in transferring a telephone number to another carrier and routing calls under the N-1 querying protocol.[12] We concluded that section 251(e)(2) applies to the distribution of number portability costs among carriers as well as the recovery of those costs by carriers.[13] We found that carrier-specific costs not directly related to providing number portability are not costs of number portability and, consequently, are not subject to section 251(e)(2) and its competitively neutral mandate.[14]

6. In the *Third Report and Order*, we applied the rules adopted in the *First Report and Order* regarding competitively neutral cost recovery to the rules regarding the recovery of shared and carrier-specific costs.[15] The rules regarding shared costs require that each telecommunications

[11] Number portability is deployed through a system of multiple regional databases. The regional databases will facilitate the provision of number portability by providing carriers with the number portability routing information that is necessary to route telephone calls between the carriers' networks. Each database serves an area that corresponds to one of the original regional Bell Operating Company service territories. *See Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8399-8400, paras. 91-92 (1996) (*First Report and Order*).

[12] *Third Report and Order*, 13 FCC Rcd at 11725, para. 38. Under the N-1 querying protocol, the N-1 carrier is the carrier responsible for the query to the carrier's or a third party's service control point. The query is a call made to determine the address or location routing number (LRN) for the call. "N" is the entity terminating the call to the end-user, or a network provider with whom the entity has contracted to provide tandem access. The N-1 carrier for a local call will usually be the calling customer's LEC and the N-1 carrier for an interexchange call will usually be the calling customer's interexchange carrier. Carriers may arrange for another carrier or third party to perform query services for them as long as that entity charges the N-1 carrier in accordance with the requirements established in this proceeding. If a call is not queried by the N-1 carrier, the call might be routed by default to the LEC that originally served the telephone number, who will perform the default query for the N-1 carrier. The N-1 protocol was recommended by the North American Numbering Council (NANC), the industry and the state/regional workshops regarding the technical and operational standards for long term number portability and was adopted by the Commission in the *Second Report and Order*. *See Telephone Number Portability*, CC Docket No. 95-116, Second Report and Order, 12 FCC Rcd 12281, 12287, para. 8, 12323-24, paras. 73-75 (1997) (*Second Report and Order*).

[13] *Third Report and Order*, 13 FCC Rcd at 11725-26, para. 39.

[14] *Id.* at 11724, para. 37. On December 14, 1998, the Common Carrier Bureau issued an order providing guidance for carriers on: (1) the costs that are eligible for recovery through federal number portability charges; (2) the appropriate methodologies for measuring costs eligible for LNP recovery; and (3) the allocation of eligible costs between end user and query services charges. *Cost Classification Order*, 13 FCC Rcd 24495. The *Third Report and Order* delegated authority to the Common Carrier Bureau for this purpose. *Id.* at 11740, para. 75.

[15] *Id.* at 11731-32, 11754-56, paras. 52-53, 105-107. Our competitive neutrality rules require that the cost of number portability borne by each carrier does not affect significantly any carrier's ability to compete with other carriers for customers in the marketplace. Under our two-part test to determine whether this requirement is met, the way carriers bear the costs of number portability: (1) must not give one service provider an appreciable, incremental cost advantage over another service provider when competing for a specific subscriber, and (2) must not disparately affect the ability of competing service providers to earn a normal return. *See First Report and Order*, 11 FCC Rcd. at 8419-21, paras. 131-135.

carrier contribute to the costs of each regional database in proportion to each carrier's intrastate, interstate, and international end-user telecommunications revenues for that region. We determined that after each carrier's portion of the shared costs is distributed on the basis of end-user revenues, the costs are treated as carrier-specific costs directly related to providing number portability.[16] We concluded that it is competitively neutral for carriers to bear their own carrier-specific costs directly related to providing number portability,[17] and we allowed the incumbent LECs to recover these costs through: (1) a monthly number portability end–user charge;[18] and, (2) a number portability query-service charge that applies to carriers on whose behalf the incumbent LEC performs queries.[19] We allowed other telecommunications carriers to recover their carrier-specific costs directly related to providing local number portability in any lawful manner.[20]

7. In the *Cost Classification Order*, the Bureau adopted a two-part test for incumbent LECs to use to identify carrier-specific costs that are directly related to the implementation and provision of number portability.[21] In order to determine that costs are eligible for recovery through the federal cost recovery mechanism, a carrier must show that these costs: (1) would not have been incurred by the carrier "but for" the implementation of number portability; and (2) were incurred "for the provision of" number portability.[22] The Bureau found that application of this test would avoid over compensation of LECs for their costs, as LECs already recover the cost of general network upgrades through standard cost recovery mechanisms. The Bureau, therefore, concluded that the incumbent LECs should not be allowed to recover these same costs through both federal number portability charges, as well as through price caps or rate-of-return recovery mechanisms.[23]

8. The Bureau concluded that only new costs, but not the costs incurred by incumbent LECs prior to number portability implementation, could be claimed as eligible number portability costs.[24] The Bureau reasoned that to allow recovery of costs other than new costs would lead to double recovery of costs already subject to recovery through standard recovery mechanisms.[25] The Bureau directed the LECs to submit tariffs that distinguish clearly costs incurred for the

[16] *Third Report and Order*, 13 FCC Rcd at 11738-39, para. 69.

[17] *Id.* at 11773-76, paras. 135-141.

[18] *Id.* at 11776, para. 142. *See* 47 C.F.R. §§ 52.33(a), (a)(1).

[19] *Third Report and Order*, 13 FCC Rcd at 11778, para. 147. *See* 47 C.F.R. §§ 52.33(a), (a)(2).

[20] *Third Report and Order*, 13 FCC Rcd at 11774, para. 136.

[21] *Cost Classification Order*, 13 FCC Rcd at 24500, para. 10.

[22] *Id.*

[23] *Id.* at para. 11.

[24] *Id.* at 24503, para. 18.

[25] *Id.*

narrowly defined portability functions from costs incurred to adapt other systems to implement number portability, such as repair and maintenance, billing, or order processing systems.[26]

III. MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

A. Jurisdiction

1. Federal/State Jurisdiction

a. Background

9. In the *Third Report and Order*, we determined that section 251(e)(2)[27] requires the Commission to ensure that carriers bear the costs of providing local number portability on a competitively neutral basis for both interstate and intrastate calls.[28] In this light, we determined that an exclusively federal recovery mechanism for long-term number portability would enable the Commission to satisfy most directly the competitive neutrality mandate of the 1996 Act and minimize the administrative and enforcement difficulties that might arise if jurisdiction over local number portability was concurrent, i.e., split between federal and state regulatory authorities.[29] Several petitioners seek reconsideration of the Commission's conclusion that it has exclusive jurisdiction to establish a federal cost recovery mechanism for the cost of providing intrastate local number portability. Petitioners argue that section 251(e)(2) provides no express authority for the Commission to establish an end-user collection mechanism for intrastate number portability costs or to develop a centralized approach for the recovery of the ongoing intrastate costs of implementing long-term number portability.[30] Specifically, petitioners argue that the language of section 251(e)(2) does not grant the Commission the unambiguous, straightforward authority required to preempt the states' authority to determine an appropriate recovery mechanism for the intrastate costs of number portability.[31]

b. Discussion

10. We are unpersuaded by petitioners' arguments. We agree with commenters that petitioners have not raised any new or compelling arguments that were not presented to, and considered by, the Commission in the *Third Report and Order*.[32] As we determined in the *Third Report and Order*, section 251(e)(2)'s express and unconditional grant of authority to the Commission requires us to ensure that carriers bear the cost of providing number portability on a

[26] *See id.* at 24501, para. 12.

[27] *See* 47 U.S.C. § 251(e)(2).

[28] *See Third Report and Order,* 13 FCC Rcd at 11719-20, para. 28.

[29] *See id.* at 11720, para. 29; *see also First Report and Order*, 11 FCC Rcd at 8415-24, paras. 121-40.

[30] *See* New York DPS Petition at 2-6; Pennsylvania Office of the Consumer Advocate Petition at 3.

[31] *See* New York DPS Petition at 2-6; Pennsylvania Office of the Consumer Advocate Petition at 3.

[32] AT&T Opposition at 2; BellSouth Comments at 7-8; MCI's Response at 13; SBC Comments at 4-5.

competitively neutral basis for both interstate and intrastate calls.[33] Section 251(e)(2) states that carriers shall bear the costs of number portability "as determined by the Commission," and does not distinguish between costs incurred in connection with intrastate calls and costs incurred in connection with interstate calls. Additionally, the Supreme Court has stated that "[t]he FCC has rulemaking authority to carry out the 'provisions of this Act,' which include §§ 251 and 252, added by the Telecommunications Act of 1996."[34]

11. Moreover, we are unpersuaded by petitioners' arguments that section 251(e)(2) provides no express authority allowing the Commission to exercise jurisdiction over the carrier-specific cost recovery mechanism for the ongoing intrastate costs of number portability.[35] As we concluded in the *Third Report and Order*, section 251(e)(2) requires the Commission to ensure that number portability costs are distributed among, as well as recovered by, carriers on a competitively neutral basis.[36] Despite our tentative conclusion in the *First Report and Order*[37] that section 251(e)(2) only applied to the distribution of number portability costs, in the *Third Report and Order* we determined that section 251(e)(2) applies to both distribution and recovery of number portability costs.[38] We concluded that this interpretation of section 251(e)(2) best achieves the congressional goal of ensuring that the costs of providing number portability are recovered in a manner that does not discourage the development of local competition that number portability is intended to encourage.[39] We reasoned that if we ensured the competitive neutrality of only distribution of costs, carriers could effectively undo this competitively neutral distribution by recovering some of these costs from other carriers in a manner that is not competitively neutral.[40] We continue to believe that section 251(e)(2) applies to both the distribution and recovery of number portability costs, thereby ensuring achievement of the congressional goal of promoting local competition.

12. We are not persuaded by petitioners' argument that because the 1996 Act does not modify section 152(b),[41] which specifically preserves state jurisdiction over intrastate communications, the Commission lacks jurisdiction over intrastate number portability costs.[42] In

[33] *Third Report and Order*, 13 FCC Rcd at 11719-20, paras. 28-29.

[34] *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 378 (1999).

[35] *See* New York DPS Petition at 7.

[36] *Third Report and Order*, 13 FCC Rcd at 11725, para 39.

[37] *First Report and Order*, 11 FCC Rcd at 8460, para. 209.

[38] *Third Report and Order*, 13 FCC Rcd at 11725, para 39.

[39] *Id.*

[40] *Id.* The Commission noted, as an example, that an incumbent LEC could redistribute its number portability costs to other carriers by seeking to recover them in increased access charges to IXCs.

[41] *See* 47 U.S.C. § 152(b).

[42] *See* New York DPS Petition at 2-6.

AT&T Corp. v Iowa Utilities Board,[43] the Supreme Court rejected the argument that because local competition provisions are not identified in section 152(b)'s "except" clause, the 1996 Act does nothing to displace the presumption that the states retain their traditional authority over local phone service.[44] The Court determined that this argument ignores section 201(b), which explicitly gives the Commission jurisdiction to make rules governing matters to which the 1996 Act applies.[45] The Supreme Court concluded that section 201(b) "means what it says: The FCC has rulemaking authority to carry out the 'provisions of this Act,' which include §§ 251 and 252, added by the Telecommunications Act of 1996."[46] Thus, we affirm our decision in the *Third Report and Order* that we have exclusive jurisdiction over the distribution and recovery of both intrastate and interstate costs of implementing long-term number portability.

13. Finally, we note that some petitioners request clarification that in states where a recovery mechanism has not yet been established for interim number portability, the incumbent LEC may elect to have the costs of interim number portability incorporated into the long-term number portability monthly charge.[47] This issue was decided in our reconsideration of the *First Report and Order*.[48] In the *Fourth Reconsideration Order*, although we reaffirmed our authority over interstate and intrastate number portability cost recovery, we denied requests that we generally preempt state number portability cost recovery decisions for interim number portability.[49] Instead, we affirmed our earlier conclusion in the *First Report and Order* that states may continue to decide on cost recovery mechanisms for interim number portability, as long as they meet our competitively neutral guidelines.[50] Thus, we will not allow incumbent LECs to incorporate the costs of interim number portability into their long-term number portability monthly charge.

2. Determining the N-1 Carrier on IntraLATA and Extended Area Service Calling Plans

a. Background

14. In the *Second Report and Order*, we adopted the North American Numbering Council's

[43] *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366.

[44] *Id.* at 379-80. Title 47 U.S.C. § 152(b) states, in relevant part, that "Except as provided in sections 223 through 227, inclusive, and section 332, and subject to the provisions of section 301 and title VI, nothing in this Act shall be construed to apply or to give the Commission jurisdiction . . . ." 47 U.S.C. § 152(b).

[45] *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. at 380.

[46] *Id.* at 378.

[47] *See* Ameritech Petition at 12; U S WEST Reply at 4.

[48] *See Telephone Number Portability*, CC Docket No. 95-116, Fourth Memorandum Opinion and Order on Reconsideration, FCC 99-151 (rel. July 16, 1999) (*Fourth Reconsideration Order*).

[49] *Fourth Reconsideration Order* at para. 29.

[50] *Id.*

(NANC's) recommendation that the carrier in the call routing process immediately preceding the terminating carrier be designated the "N-1" carrier.[51] Petitioners request that the Commission, in instances of intraLATA toll calling and EAS calling plans, relinquish jurisdiction over the distribution and recovery of intrastate costs associated with long-term number portability to the states.[52] In the alternative, petitioners request that the Commission direct NANC to develop querying protocol and cost recovery scenarios for intraLATA and EAS-type services.[53] Petitioners contend that due to the complex and varied arrangements for these services, it will be difficult for the Commission to determine the N-1 carrier assignment for intrastate services and appropriate tariff rates for number portability network interconnection and local number portability queries associated with various intraLATA and EAS type services.[54]

b. Discussion

15. We agree with petitioners that these types of intrastate services may create complex issues regarding those costs that may be appropriate for recovery by carriers in the implementation of long-term number portability. However, we do not believe it appropriate to allow the individual states to exercise jurisdiction over the implementation and cost recovery mechanism for local number portability in the context of intraLATA and EAS-type services. As we have stated above, we believe that an exclusively federal cost recovery mechanism for long-term number portability enables the Commission to satisfy most directly the 1996 Act's competitive neutrality mandate and minimize the administrative and enforcement difficulties that might arise if jurisdiction over local number portability were divided.[55] Therefore, we deny petitioners' request that we should relinquish jurisdiction over the intrastate costs of number portability associated with intraLATA and EAS-type service calling plans.

16. Petitioners further request that the Commission clarify its definition of N-1 carrier assignment responsibility for these specific intraLATA and EAS-type services. Petitioners argue that the many and varied types of call routing arrangements for these types of intrastate services will make it difficult for the Commission to determine the N-1 carrier in all instances.[56] Petitioners argue that NANC's Architecture & Administrative Plan for Local Number Portability[57] failed to provide N-1 querying protocol scenarios for IntraLATA toll calls or EAS-

[51] *See Second Report and Order*, 12 FCC Rcd at 12323, para. 73.

[52] ORTC and TSTCI Joint Petition at 8-9.

[53] *Id.* at 11.

[54] *Id.* at 8-9.

[55] *Third Report and Order*, 13 FCC Rcd at 11720, para. 29; *see also First Report and Order*, 11 FCC Rcd at 8415-24, paras. 121-40.

[56] ORTC and TSTCI Joint Petition at 8-9.

[57] *See* North American Numbering Council, Local Number Portability Administration Selection Working Group Report App. D (Architecture & Administrative Plan for Local Number Portability) (Apr. 25, 1997) (NANC Recommendation), *adopted, Second Report and Order*, 12 FCC Rcd at 12323, para.73.

type service.[58] Petitioners request that the Commission direct NANC to develop comprehensive intraLATA and EAS-type service querying protocol scenarios for the various arrangements for these services throughout the country.[59]

17. We deny the request to develop the specific protocol scenarios requested by petitioners because at this time the procedures established under the *Second Report and Order* appear sufficient.[60] We do believe that, in most instances, carriers have not had any significant difficulty determining which carrier is the N-1 carrier. Under the N-1 querying protocol, the N-1 carrier is responsible for the query where "N" is the entity terminating the call to the end-user, or a network provider contracted by the entity to provided tandem access.[61] Thus, the N-1 carrier (*i.e.*, the last carrier before the terminating carrier) for a local call will usually be the calling customer's local service provider; the N-1 carrier for an interexchange call will usually be the calling customer's interexchange carrier.[62] We believe that until a specific problem arises in determining the N-1 carrier, it is premature to ask NANC to spend the time and resources it would take to develop scenarios for the many different types of intraLATA and EAS-type services throughout the country. We encourage the carriers to bring such specific issues to NANC, pursuant to NANC's oversight of number portability administration, for a recommended resolution to be submitted by NANC to the Common Carrier Bureau as and when such issues arise in the context of the provision of number portability.[63]

B. Costs of the Regional Databases

1. Billing and Collection Issues

a. Background

18. In the *Third Report and Order*, we stated that, as part of its management duties under section 52.26 of the Commission's rules,[64] the local number portability administrator (LNPA) of each regional database must collect sufficient revenues to fund the operation and management of that database.[65] We required the LNPA to allocate the costs of each regional database among

[58] ORTC and TSTCI Joint Petition at 9.

[59] *Id.* at 11.

[60] *Second Report and Order*, 12 FCC Rcd at 12323, para. 73.

[61] *Third Report and Order*, 13 FCC Rcd at 11711, para. 15; *see also* NANC Recommendation at 8.

[62] *Third Report and Order*, 13 FCC Rcd at 11711, para.15.

[63] In the *Second Report and Order*, the Commission adopted the NANC's recommendation that it provide general oversight of number portability administration on an ongoing basis. Specifically, the Commission established a procedure whereby parties may bring matters regarding number portability administration to the NANC so that it may recommend a resolution of those matters to the Commission. *Second Report and Order*, 12 FCC Rcd at 12351, para. 128.

[64] 47 C.F.R. § 52.26.

[65] *Third Report and Order*, 13 FCC Rcd at 11761, para. 116.

carriers in proportion to each carrier's intrastate, interstate, and international end-user telecommunications revenues attributable to that region.[66] We also noted that some carriers have already begun paying their regional database administrators based on temporary agreements negotiated between the regional limited liability corporations (LLCs) and the region's LNPA, despite the fact that all eligible carriers had not yet signed such agreements.[67] We permitted, but did not require, each regional administrator to adjust prospectively through a reasonable true-up mechanism the future bills of those carriers that participated in such agreements.[68] Such true-ups account for the period prior to the effective date of our rules and recognize that agreements might have included reasonable cost recovery mechanisms to recover regional database costs on a temporary basis pending the adoption of the *Third Report and Order*.[69] NeuStar has been selected the LNPA of each region.[70]

19. A number of petitioners raised issues relating to billing and collection of LNPA costs. Specifically, petitioners seek reconsideration or clarification of: (1) the universe of carriers used to calculate cost recovery; (2) potential double recovery of shared database charges; (3) audits of the LNPA's costs; and (4) the scope of work that may be included in the administrators' shared costs.[71] In response to these concerns, NeuStar asserts that these billing and collection issues are premature and should not be addressed at this time.[72] NeuStar asserts that the "consultative process" occurring between it and the LLCs will provide an effective forum for establishing alternate billing and collection implementation approaches to address industry concerns, such as those raised by the commenters.[73]

b. Discussion

20. WorldCom requests that the Commission clarify that when NeuStar implements its true-up, it does so using all carriers as a basis of its cost recovery plan, not just those carriers that have already signed user agreements with the LNPA.[74] WorldCom believes that it would not be

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[66] *Id.*

[67] *Id.* at para. 117.

[68] *Id.*

[69] *Id.*

[70] *See id.* at 11709-10, para. 13. We note that on November 17, 1999 the Commission approved the transfer of Lockheed Martin IMS's NANPA functions to NeuStar. *See Request of Lockheed Martin Corporation and Warburg, Pincus & Co. for Review of the Transfer of Lockheed Martin Communications Industry Services Business*, CC Docket No. 92-237, Order, 14 FCC Rcd 19792 (1999).

[71] *See, e.g.*, WorldCom Petition at 7; *see also* AT&T Corp. Opposition at 15-16. We note that WorldCom and MCI merged after the filing of the pleadings in this proceeding.

[72] Lockheed Martin IMS Comments at 2.

[73] *Id.* at 3.

[74] WorldCom Petition at 7; *see also* AT&T Corp. Opposition at 15-16.

competitively neutral to allow NeuStar to bill the total costs of the regional database to only the small group of carriers that have signed user agreements, with the intention of somehow crediting those carriers if and when other carriers pay their proportionate share.[75] We agree with WorldCom and hereby clarify that LNPAs shall assess shared costs on all eligible carriers, not just carriers with existing long-term number portability contracts with an LLC. As we stated in the *Third Report and Order*, we require all telecommunications carriers to bear LNPA shared costs, and we recognize that some carriers have already begun paying their regional database administrators based on temporary agreements negotiated by the regional LLC.[76] We did not envision that such true-up would exempt carriers that have not yet signed long-term number portability contracts with the LLC, but rather would include such carriers in the cost allocation. We agree with WorldCom that although carriers without LLC contracts did not pay shared number portability costs from the start, they are not exempt from their responsibility to bear costs in a competitively neutral manner.[77] We also agree with AT&T that we did not intend to penalize carriers currently under contract with the LNPA.[78]

21. However, we decline to adopt WorldCom's recommendation that we specify the manner in which NeuStar should implement true-ups, such as prohibiting NeuStar from requiring a few carriers to pay 100 percent of the costs, and crediting funds back as other payments flow in after other carriers are billed at a later date.[79] We do not believe that WorldCom has presented sufficient evidence to support its claim that this true-up method is discriminatory.[80] Also, we acknowledge NeuStar's need to create and maintain the number portability database, despite the fact that all carriers have not signed user agreements with NeuStar. We reiterate our earlier finding in the *Second Report and Order*, in which we held that the LLCs shall "provide immediate oversight and management of the local number portability administrators."[81] We strongly encouraged all parties to attempt to resolve issues regarding number portability deployment among themselves and, if necessary, under the auspices of the NANC.[82]

22. Vanguard asserts that WorldCom's request that all carriers must bear their proportionate share of the LNPA's shared costs may lead to double recovery.[83] Vanguard asserts that

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[75] WorldCom Petition at 7.

[76] *Third Report and Order*, 13 FCC Rcd at 11759-61, paras. 113-117.

[77] WorldCom Petition at 6.

[78] AT&T Corp. Opposition at 15-16.

[79] WorldCom Petition at 7.

[80] *See id.*

[81] *Second Report and Order*, 12 FCC Rcd at 12345, para. 114. We note that such oversight is to continue only until the Commission concludes further proceedings to examine the issue of local number portability administrator oversight and management. *Id.* at 12346-47, para. 119; *see also* 47 C.F.R. § 52.26(b)(2).

[82] *Second Report and Order*, 12 FCC Rcd at 12352-53, para. 130.

[83] Vanguard Opposition at 5-7.

incumbent LECs performing queries for CMRS carriers are recovering their portion of the shared administrator's charges through query service charges, and any true-up adopted by administrators has to be sensitive to this particular potential for double recovery of costs, which would not be competitively neutral.[84] MCI responds that Vanguard's concern is over-recovery through query service charges, not double recovery, and such concerns should be addressed in the context of specific query service tariffs.[85]

23. We agree with MCI that Vanguard's concern about double recovery is really an issue of potential over-recovery through query service charges.[86] Vanguard believes that CMRS providers will be double-paying their share of number portability costs by paying their regional LNPAs for their respective portion of the shared costs, as well as paying incumbent LECs for query service charges, through which incumbent LECs will pass on their own shared LNPA costs. First, we note that all carriers who contract out their querying services, not just CMRS carriers, will be in the identical position of paying both the regional LNPAs for shared costs, as well as query service charges. Second, we held in the *Third Report and Order* that each carrier's LNPA costs, once distributed, are carrier-specific costs directly related to number portability,[87] and that an incumbent LEC's carrier-specific costs directly related to number portability are to be recovered through tariffed charges.[88] We also held in the *Cost Classification Order* that carriers are to allocate their carrier-specific costs directly related to number portability between end-user charges and query service charges.[89] We clarify that incumbent LECs must allocate their shared administrative fees between the query service charge and the end-user charge.[90] If a carrier believes that an incumbent LEC is recovering its shared costs solely through query service charges rather than allocating such charges between end-user and query service charges, or recovering these costs through inflated query service charges, it should so state in the context of a carrier's tariff review process[91] or through the Commission's normal complaint procedures.[92] We will investigate a specific carrier's tariff and rates and examine them for over-recovery via the query service charge at that time.

24. WorldCom asks the Commission to clarify that shared LNPA costs include shared

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[84] *Id.* at 6-7.

[85] MCI Reply at 7-8.

[86] *Id.*

[87] *Third Report and Order*, 13 FCC Rcd at 11745, para. 87.

[88] *Id.* at 11773-74, para. 135.

[89] *See Cost Classification Order*, 13 FCC Rcd at 24511, para. 40.

[90] *See id.*

[91] 47 U.S.C. § 204.

[92] *Id.* at § 208.

database costs, future statement of work modifications, and porting charges.[93] We agree with WorldCom that the LNPAs may include database costs and modifications. We have previously concluded that number portability costs include initial costs as well as costs due to subsequent changes in the number portability database.[94] Like all other shared costs, these costs should be distributed among all carriers.[95] However, the meaning of WorldCom's statement that the LNPA should be allowed to assess "porting charges" is unclear. We note that in the *Third Report and Order*, we stated that acceptable LNPA shared costs that could be distributed to telecommunications carriers include "nonrecurring, recurring, upload, and download costs."[96] If WorldCom is referring to such uploading and downloading costs, and such costs meet the "but for" test for number portability cost recovery,[97] then we agree that such charges should be included in the LNPA's shared costs.

25. WorldCom also asks the Commission to clarify that if number portability implementation causes public safety concerns that must be addressed on a technical or operational level, any LNPA charges related to resolving those public safety concerns also should be billed as shared costs.[98] We held in the *First Report and Order* that, as a general matter, any long-term number portability must not "result in unreasonable degradation in service quality or network reliability when implemented,"[99] and recognized that consumers "rely on the public switched telephone network for their livelihood, health and safety."[100] In the *Third Report and Order,* we adopted the tentative definition of shared costs as "costs incurred by the industry as a whole, such as those incurred by third-party administrator to build, operate, and maintain the databases needed to provide number portability."[101] As we have already established a definition of "shared costs" that commenters to the *Third Report and Order* found to be workable, we decline to expand on that definition in the abstract.[102]

26. In the *Third Report and Order*, we reserved the right to audit each LNPA's costs.[103] PCIA asserts that the Commission should clarify which of the regional database administrator's

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[93] WorldCom Petition at 10.

[94] *Third Report and Order*, 13 FCC Rcd at 11725, para. 38.

[95] *Id.* at 11759-61, paras. 113-117.

[96] *Id.* at 11745, para. 87.

[97] *Cost Classification Order*, 13 FCC Rcd at 24500, para. 10.

[98] WorldCom Petition at 10.

[99] *First Report and Order*, 11 FCC Rcd at 8378, para. 48.

[100] *Id.* at 8382, para. 55.

[101] *Third Report and Order,* 13 FCC Rcd at 11738-11739, para. 69.

[102] *See* WorldCom Petition at 10.

[103] *Third Report and Order*, 13 FCC Rcd at 11763-64, para. 121.

costs are recoverable and should implement a procedural mechanism for affected entities to review and comment on the administrator's annual budget.[104] In opposition, AT&T comments that such procedure would add a new layer of administrative complexity for the Commission, introduce a new source of delays, and increase the costs of both the LNPAs and the carriers.[105] NeuStar asserts that it was awarded the number portability regional contracts through a vigorously competitive selection process designed to ensure the lowest possible prices in the industry, which renders additional Commission oversight of its budget unnecessary.[106] NeuStar also believes that public disclosure of its budget would unfairly harm it in competitive bidding for any future third party contracts.[107] NeuStar states that it has committed to make its fees available for audits pursuant to existing number portability administration contracts.[108] AT&T also notes that the *Second Report and Order* instructed carriers that they could pursue complaints to NANC or the Commission if the LNPAs are not meeting Commission requirements.[109]

27. We agree with AT&T that adding an additional audit requirement would add administrative complexity and cost without a commensurate benefit. As AT&T noted, the Commission stated in the *Second Report and Order* that the LLCs "provide immediate oversight and management of the local number portability administrators."[110] The record does not support PCIA's contention that additional provisions for public comment on NeuStar's annual budget are necessary, especially because the specifics of NeuStar's budget have been agreed upon in the context of contractual negotiations, and because carriers may request an audit of NeuStar's budget pursuant to LNPA contracts. We therefore deny PCIA's request to implement a procedural mechanism to review and comment on the administrator's annual budget.

2. Revenues to be Included in the Allocator

a. Background

28. In the *Third Report and Order,* we decided that the number portability regional database administrator would allocate the costs of each number portability regional database among all telecommunications carriers in proportion to each carrier's intrastate, interstate, and international end-user telecommunications revenues attributable to that region.[111] Our decision to use the end-user revenue allocator was based on our conclusion that it meets the two-prong competitive

[104] PCIA Petition at 3-5; *see also* UTC Comments at 5.

[105] AT&T Opposition at 14-15.

[106] Lockheed Martin IMS Comments at 4.

[107] *Id.*

[108] *Id.*

[109] AT&T Opposition at 14-15.

[110] *Second Report and Order*, 12 FCC Rcd at 12345, para. 114.

[111] *Third Report and Order*, 13 FCC Rcd at 11754-55 and 11759, paras. 105 and 113.

neutrality test in that: (1) the allocator will not give one service provider an appreciable, incremental cost advantage when competing for a subscriber; and (2) allocating shared costs in proportion to end-user revenues will prevent the shared costs from disparately affecting the ability of carriers to earn a normal return.[112]

29. MCI challenges the end-user revenue allocator adopted by the Commission. MCI asserts that the end-user revenue allocator is over-inclusive because it captures services that are completely unrelated to number portability, that neither use numbering resources nor impose any costs on the Number Portability Administration Center (NPAC) system, and receive no benefits from local competition or local number portability.[113] MCI requests that we exclude from the regional database cost allocator revenues from services such as private lines, virtual private networks, toll free, and outbound international services.[114]

b. Discussion

30. We affirm our decision in the *Third Report and Order* that the number portability regional database administrator will allocate the costs of each number portability regional database among all telecommunications carriers in proportion to each carrier's intrastate, interstate, and international end-user telecommunications revenues attributable to that region. We disagree with MCI that the end-user revenue allocator is over-inclusive. Section 251(e)(2) requires that number portability costs "be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[115] The statutory language mandates that the costs of number portability be shared by all telecommunications carriers in a competitively neutral manner, and does not limit the application of the shared costs to telecommunications services that use numbering resources. The Commission determined that the end-user revenues allocator is competitively neutral in part because it spreads the costs of number portability among all telecommunications carriers rather than imposing the costs disproportionately on any particular class or classes of carriers.[116]

31. In this light, the Commission determined that the end-user revenue allocator would not give one service provider any appreciable, incremental cost advantage when competing for a subscriber.[117] The Commission reasoned that because the allocator would distribute the shared costs of the regional databases to each carrier in proportion to that carrier's end-user revenues, carriers would incur approximately the same increase in shared costs to win a specific

[112] *Id.* at 11755-56, paras. 106-07.

[113] MCI Petition at 3.

[114] *Id.* at 1-6.

[115] 47 U.S.C. § 251(e)(2).

[116] *Third Report and Order*, 13 FCC Rcd at 11755-56, paras. 106-107.

[117] *Id.* at 11755, para. 106.

customer.[118]

32. Moreover, the Commission concluded that allocating shared costs in proportion to end-user revenues would prevent the shared costs from disparately affecting the ability of carriers to earn a normal return.[119] The Commission reasoned that because allocations of the shared costs would vary directly with end-user revenues, a carrier's share of the regional database costs would increase in proportion to its customer base.[120] Thus, no carrier's portion of the shared costs would be excessive in relation to its expected revenues, and its allocated share would only increase as it increases its revenue stream.[121]

33. MCI argues that administrative efficiency is not a valid reason for adopting an allocator that imposes cost recovery obligations on carriers where there is no relationship between the service -- number portability -- and the services from which the carrier realizes revenues.[122] We disagree. As discussed above, Congress mandated that the Commission establish a competitively neutral mechanism for the recovery of number portability costs.[123] In seeking to establish a revenue allocator, the Commission not only sought one that satisfied this Congressional mandate, but one that would be relatively simple for telecommunications carriers to apply. In this light, the Commission adopted the end-user telecommunications revenue allocator for three reasons. First, because it met the Congressional competitive neutrality mandate.[124] Second, because it would be administratively efficient for telecommunications carriers to apply because they already track their sales to end users for billing purposes.[125] And, third, because telecommunication carriers are familiar with the end-user revenues allocator from its use for universal service

[118] The Commission provided the following example as explanation: if one of two LECs wins a third LEC's subscriber, whichever of the two LECs who wins the subscriber will win the end-user revenue that subscriber generates. This will increase the winning LEC's allocated portion of the shared costs. Because the subscriber is likely to use approximately the same amount of local service regardless of which of the two competing LECs provides service to the subscriber, the incremental shared cost one of the two LECs would experience if it had won the subscriber would be about the same as the incremental shared cost the other would experience if it won the subscriber. This increase would also approximately equal the decrease in the shared costs the third carrier would experience, having lost the subscriber. These amounts may not be exactly the same because each of the three carriers may have different rates and may not collect exactly the same revenue from that subscriber. The Commission reasoned that any difference would not be significant enough to create an appreciable, incremental cost disadvantage. *Id.*

[119] *Id.* at 11755-56, para. 107.

[120] *Id.*

[121] *Id.*

[122] MCI Petition at 4.

[123] 47 U.S.C. § 251(e)(2).

[124] *Third Report and Order*, 13 FCC at 11755, para. 106.

[125] *Id.* at 11765, para. 107.

support contributions.[126]

34. We agree with Bell Atlantic that if we begin excluding revenues from the allocation process, other carriers will likely seek to exclude revenues from other services, resulting in little change in allocation, but a great deal of extra bookkeeping.[127] We also believe that allowing carriers to exclude revenues associated with particular services would result in unnecessary administrative work for not only the telecommunications carriers, but also for the LNPA. Reducing the bookkeeping and reporting burdens on the telecommunications industry is one of the goals of the Commission's recent *Streamlined Contributor Reporting Requirements Order*.[128] We continue to believe that the application of the end-user revenues allocator fulfills our congressional mandate of ensuring that the costs of number portability are shared on a competitively neutral basis by all telecommunications carriers. Thus, we affirm our end-user revenues allocator and deny MCI's request for reconsideration.

3. National and Multi-Regional Carriers

a. Background

35. In the *Third Report and Order*, we determined that the costs of the number portability regional databases should be allocated among all telecommunications carriers operating in each of the seven number portability regions in proportion to each carrier's end-user revenues as determined by the end-user revenues collected by all telecommunications carriers in that region.[129] To facilitate the cost allocation of the regional databases, the local number portability administrator for each regional database may collect end-user revenue information for all telecommunications carriers once each year.[130]

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[126] *Id.* Since that time, we have modified our rules for contributions to the Telecommunications Relay Services (TRS) and North American Numbering Plan (NANP) so that the contributions are now based on end-user telecommunications revenues. *See 1998 Biennial Regulatory Review -- Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171, Report and Order, 14 FCC Rcd 16602, 16630-35, paras. 59-70 (1999) (*Streamlined Contributor Reporting Requirements Order*).

[127] Bell Atlantic Response at 3-4.

[128] One of the goals of the *Streamlined Contribution Reporting Requirement Order* is to reduce carriers' and service providers' burdens by combining the reporting requirements of the TRS Fund, federal universal support mechanisms, NANP, and local number portability administration into one consolidated form, the Telecommunications Reporting Worksheet. *See Streamlined Contributor Reporting Requirements Order*, 14 FCC Rcd at 16603, para. 1.

[129] *Third Report and Order*, 13 FCC Rcd at 11761, para. 116.

[130] *Id. See* 47 C.F.R. § 52.32(a)(2). We note that NeuStar, the database administrator for all seven regions, requested this information from all telecommunications carriers through FCC Form 487, the LNP 1998 Worksheet. FCC Form 499-A replaced FCC Form 487 in July 1999 and is now used to collect this information. *See Streamlined Contributor Reporting Requirements Order*, 14 FCC Rcd 16602.

36. Commenters argue that compliance with section 52.32(a)(2) of our rules will require national and multi-regional carriers to change the manner in which they record revenues.[131] WorldCom requests that the Commission allow national and multi-regional carriers to report total end-user revenues, and then divide these figures among the seven regional databases.[132] MCI suggests that the Commission permit carriers to attribute end-user revenues on a pro-rata or other reasonable basis, rather than being required to develop new revenue attribution systems only for number portability.[133] In response, NeuStar notes that it is engaged in discussions with the LLC for each region on the very issues raised by MCI and WorldCom.[134] NeuStar argues that it would be premature for the Commission to address these issues at this time.[135] Moreover, in separately filed petitions for waiver, Williams Communications, Inc. (Williams) and AMSC Subsidiary Corporation (AMSC) request waiver of section 52.32 of our rules on similar grounds.[136]

b. Discussion

37. We recognize the inherent difficulties some national and multi-regional carriers will experience in attempting to determine end-user revenue by regional database area. We agree with WorldCom that the use of an estimate can reduce an otherwise onerous data collection paperwork burden.[137] We also agree with MCI that requiring national and multi-regional carriers to develop region-specific attribution systems for all of its end-user services may be costly and administratively burdensome.[138] The use of a proxy based on the percentage of subscribers a carrier serves in a particular region is a reasonable means of reaching an estimate and of reducing the administrative burden on the carriers. Therefore, we will allow national and multi-region carriers to use a proxy to allocate, on a good faith basis, their end-user revenues to the appropriate regional LNP administrator. Those carriers that submit, with their LNP Worksheet, an attestation certifying that they are unable to precisely divide their traffic and resulting end-user revenue among the seven LNPA regions identified in the LNP worksheet will be allowed to divide their end-user revenue among these regions based on the percentage of subscribers served

[131] WorldCom Petition at 8-9; MCI Petition at 8-9; MCI Reply at 2 n.4.

[132] WorldCom Petition at 8.

[133] MCI Petition at 8-9; MCI Reply at 2 n.4.

[134] Lockheed Comments at 2-3, 5. NeuStar also notes that each local number portability region has an established limited liability company (LLC), which has existing contracts with the LNPA to provide local number portability database services. *Id.* at 1 n.2.

[135] *Id.* at 2-3.

[136] *See* Williams Communications Petition for Expedited Waiver (filed Mar. 29, 1999) (Williams Petition) and AMSC Subsidiary Corporation Waiver Request (filed Apr. 13, 1999) (AMSC Waiver).

[137] *See* WorldCom Petition at 8.

[138] *See* MCI Petition at 8-9.

in each region. Carriers may use their billing databases to identify subscriber location.[139]

38. We acknowledge that subscriber percentages may not be the only satisfactory proxy for end-user revenue. Accordingly, national and multi-region carriers that cannot make a proxy certification based upon subscriber percentages may request a waiver of section 52.32 of our rules based on other reasonable proxy methods.

39. Neither AMSC nor Williams propose to allocate their revenue based upon number of subscribers served in the regions in which they provide service. AMSC would divide its end-user revenue equally between the LNP regions.[140] Williams proposes to report its revenue derived from services rendered in or between two or more regions, based on a "good-faith estimate" as to which portions of those revenues are derived from each of the seven regions, but it does not explain its proposed methodology.[141] Williams requests a waiver only until such time as the Commission issues rules, guidelines or policies which instruct carriers how to apportion revenue between regions, for long-term number portability cost recovery purposes, which we have now done. AMSC does not limit its waiver request in this fashion, but rather seems to request permission to permanently adopt its alternative allocation system.

40. In evaluating these petitions, we recognize that both AMSC and Williams, in all likelihood, have already begun paying their regional database administrators. Although we find that the particular allocation proxy we permit above is preferable to either of the allocation alternatives set forth in the AMSC or Williams petitions, we are also mindful of the potential administrative costs that may be incurred were we to conclude that the alternatives proposed by petitioners could not be used for those periods for which filings have already been submitted. Therefore, taking into account all these circumstances, we grant both waivers to the limited extent that the alternative revenue allocations have been submitted by AMSC or Williams on or before the release date of this Order. On a going-forward basis, we further conclude that although the proxy we adopt today provides a better allocation method than those in the petitions, we would consider alternative allocation methods that these companies might propose in waiver petitions for prospective periods, based upon their particular circumstances. With respect to future worksheets, therefore, Williams

[139] *See Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, 15 FCC Rcd 7717, 7745, 7757, paras. 52, 85 (2000).

[140] *See* AMSC Waiver at 1. AMSC requests waiver of section 52.32 on the ground that it operates a mobile satellite service system that provides two-way mobile voice and data through out the United States using five slightly overlapping beams. AMSC states that when a customer is using one of its mobile terminals, AMSC cannot identify which of the five beams the customer is using. Moreover, as beams cover thousands of square miles, AMSC argues that there is no simple or precise way to divide its traffic and end-user revenue between the regions identified in the LNP worksheet. ANSC requests that the Commission allow it to divide its end-user revenue on FCC Form 499-A equally between the LNP regions.

[141] *See* Williams Petition at 2. Williams seeks waiver of section 52.32 on the grounds that it derives a substantial portion of its revenue from services that are provided to large business customers in two or more regions, and that it is not able to assign revenue from many of its customers to a single region. Williams requests that the Commission allow it to report its revenue derived from services rendered in or between two or more regions, based on a good-faith estimate as to which portions of those revenues are derived from each of the seven regions.

and AMSC may either (1) file an attestation certifying that they are unable to precisely divide their traffic and resulting end-user revenue among the seven LNPA regions identified in the worksheet and accordingly will divide their end-user revenue among these regions based on the percentage of subscribers served in each region, consistent with this Order; or (2) request in a timely manner a waiver to use another appropriate proxy. If petitioners choose the latter alternative, we encourage them to file their waiver requests expeditiously.

C. Recovery of Carrier-Specific Costs Directly Related to Providing Number Portability

1. Independent and Rural Incumbent LECs

a. Background

41. In the *First Reconsideration Order*, the Commission determined that carriers outside the 100 largest Metropolitan Statistical Areas (MSAs) would only be required to provide local number portability within six months of a request from a carrier offering competitive local service.[142] In the *Third Report and Order*, the Commission allowed but did not require incumbent LECs to recover their carrier specific costs directly related to providing number portability through a federally tariffed end-user charge.[143] At that time, the Commission determined that recovery of these costs from end users would not begin until the end users were reasonably able to begin receiving the direct benefits of long-term number portability.[144] The Commission allowed an incumbent LEC to assess the monthly end-user charge only on end users in the 100 largest MSAs, and end users it serves outside the 100 largest metropolitan statistical areas from a number portability-capable switch.[145] Because carriers may make any switch number portability-capable, the Commission determined that this approach would encourage carriers to install number portability and ensure that end users were assessed number portability charges only where they were reasonably likely to benefit from number portability.[146] Petitioners contend that carriers that are not required to be number portability-capable at this time, are, nevertheless, incurring costs associated with number portability.[147] Petitioners argue that the *Third Report and Order* fails to provide a mechanism for carriers, in this situation, to recover

[142] *See Telephone Number Portability*, CC Docket No. 95-116, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 7236, 7266, 7298, paras. 48, 107 (1997) (*First Reconsideration Order*).

[143] *Third Report and Order*, 13 FCC Rcd at 11773-74, para. 135.

[144] *Id.* at 11776, para. 142.

[145] *Id.* at 11776, para. 143.

[146] *Id.*

[147] *See* NECA Petition at 1-4; NTCA Petition at 3; ORTC and TSTCI Petition at 3-4; *see also* Petition for Expedited Interim Waiver (filed March 19, 1999) (NECA Waiver) (NECA, NRTA, NTCA, OPATSCO, and USTA are parties to the interim waiver request).

their costs related to number portability.[148]

42. Specifically, petitioners request that an alternative recovery mechanism be established for incumbent LECs who are not required to be number portability-capable at this time.[149] Petitioners note that once shared costs are allocated to each telecommunications carrier, that carrier's portion of the shared cost is treated as a "carrier-specific cost" directly related to providing number portability. Under the rules set forth in the *Third Report and Order*, however, incumbent LECs who are not number portability-capable cannot recover these costs. Petitioners argue that this places small and independent incumbent LECs at a competitive disadvantage.[150]

43. Petitioners further argue that the *Third Report and Order* fails to provide a recovery mechanism for the costs that will be incurred for query services by those incumbent LECs that have no number portability capability.[151] USTA argues that the Commission should allow incumbent LECs without long-term number portability capability to book and recover these costs though the regular accounting and separations process.[152]

44. NECA and NTCA both note that because of joint local calling agreements between small incumbent LECs and larger incumbent LECs for the provision of number portability database query services, the larger incumbent LECs will assess smaller incumbent LECs a charge for performing query services. NECA and NTCA further point out that because of these agreements, most of their pool participants, as N-1 carriers, will incur query service costs whenever any number in an NXX their customers call, has been ported.[153] NTCA further argues that since the benefits of number portability accrue to interexchange carriers, the Commission should consider recovery through access charges as long as the mechanism it establishes is competitively neutral.[154]

b. Discussion

45. In the *Third Report and Order*, we required that all shared costs[155] be allocated among all

[148] *See* NECA Petition at 1-4; NTCA Petition at 3; ORTC and TSTCI Petition at 3-4; *Third Report and Order*, 13 FCC Rcd at 11776, para. 143.

[149] NECA Petition at 5; NTCA Petition at 5; ORTC and TSTCI Joint Petition at 4.

[150] *See* NECA Petition at 5; NTCA Petition at 5; ORTC and TSTCI Joint Petition at 4.

[151] USTA Petition at 5; NECA Petition at 4-5; NTCA Petition at 5; ORTC and TSTCI Joint Petition at 4; NECA Reply at 3, 5.

[152] USTA Petition at 5-6.

[153] NECA Petition at 3-4; NTCA Petition at 5-6.

[154] NTCA Reply at 3.

[155] Shared costs are costs incurred by the industry as a whole, such as those incurred by the third-party administrator to build, operate and maintain the databases needed to provide number portability. *See Third Report and Order*, 13 FCC Rcd at 11738-39, para. 69.

telecommunications carriers based on the requirement of section 251(e)(2) of the Act that the costs of establishing number portability "shall be borne by all telecommunications carriers on a competitively neutral basis."[156] After distribution, each carrier's portion of shared costs is treated as a carrier-specific cost directly related to providing local number portability.[157] To ensure that there would be sufficient revenues to fund the operation and management of the databases, we concluded that it was necessary to allocate the costs of each regional database among carriers in proportion to each carrier's intrastate, interstate, and international end-user telecommunications revenues attributable to that region.[158]

46. NTCA argues that if no alternative recovery mechanism is made available to incumbent LECs outside the 100 largest MSAs, they will be forced to either upgrade their systems and assess charges on their end users, or contribute to the costs of the regional databases with no method of cost recovery. They contend that both options create a "significant expense" for these carriers even though they have not received a request for portability.[159]

47. Petitioners further argue that many of the carriers outside the top 100 MSAs face no local competition in the near future, and do not have immediate long-term portability deployment obligations.[160] Petitioners further contend that it would be unfair to begin charging end users when there is no facilities-based local competition and end users receive no direct benefit from number portability.[161] For this reason, petitioners suggest that non-portability capable carriers should be permitted to treat carrier-specific local number portability costs in the same manner that other, similar network costs are currently treated i.e., through normal accounting and separations processes,[162] or allowed to recover the costs through access charges.[163]

48. In opposition, both AT&T and MCI urge the Commission to reject proposals which allow incumbent LECs to shift costs to competitors via access charges.[164] AT&T recognizes that

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[156] *See Third Report and Order*, 13 FCC Rcd at 11759, para. 113 (quoting 47 U.S.C. § 251(e)(2)).

[157] *Id.* at 11745, para. 87.

[158] *Id.* at 11754, para. 105.

[159] NTCA Petition at 4.

[160] NTCA points out that "[u]nder the current cost-recovery rules, the small and rural LECs are forced to either: (1) upgrade their systems and assess charges on their end-users; or (2) contribute to the costs of the regional database with no method of cost-recovery" and no provisions made for compensating affected carriers. *Id.*

[161] *See, e.g.*, NECA Waiver at 3-4; ORTC and TSTCI Joint Petition at 2-3. NECA suggests that those customers may be faced with substantial local rate increases as a result of other, unrelated Commission decisions in the areas of access reform, separations reform and universal service. NECA Petition at 4 n.10.

[162] NECA Petition at 5, 9; ORTC and TSTCI Joint Petition at 4; USTA Petition at 5-6.

[163] NECA Waiver at 4.

[164] AT&T Opposition at 13-14; MCI Response at 7-8.

petitioners do not explicitly advocate including local number portability costs in access charges, but argues that incumbent LECs should not be allowed to recover such costs through the regular separations process, as this approach would result in increased access charges to IXCs.[165] MCI states that in principle it has no objections to the creation of an alternative cost recovery mechanism for these small and rural incumbent LECs to recover long-term number portability related costs. However, MCI urges the Commission not to allow recovery of query costs from other carriers through access charges.[166]

49. In the alternative, petitioners suggest that small and rural incumbent LECs be allowed to pool their costs.[167] NECA specifically urges the Commission to allow these carriers to use a pooling method similar to that allowed for data base query charges associated with calls to "800" and "900" numbers."[168] NECA argues that this type of pooling arrangement would allow carriers to recover their local number portability costs before being local number portability-capable because costs are included in central office expense accounts and are then allocated between jurisdictions on the same basis as central office investment.[169]

50. We agree with AT&T that the *Third Report and Order* does not allow recovery of long-term number portability costs through the normal accounting and separations process. We also note that MCI objects to the recovery of query services costs from other carriers, but not to the creation of some viable alternative recovery mechanism.

51. We believe that competitive neutrality is essential to sustain continued deployment of the long-term number portability service. We have mandated that a carrier may only recover long-term number portability shared costs through a federal tariff. Recovery must, therefore, be sought through a federal recovery process. We agree, however, with the petitioners that certain small carriers who do not currently have long-term number portability-capable switches, but are incurring long-term number portability shared costs and additional query costs as a result of their participation in an EAS calling plan would be financially disadvantaged if they were not allowed recovery of these costs. For this reason, we reconsider the issue of whether non-LNP capable carriers serving areas outside the 100 largest MSAs may recover their eligible number portability costs through the federal mechanisms that are available to other carriers.

52. The information provided in support of the expedited petition for interim waiver shows that a significant number of end users are located in areas adjacent to the 100 largest MSAs and areas where number portability is available. These end users also participate in EAS calling plans through their local service providers and make calls to numbers in extended calling areas

[165] AT&T Opposition at 13 n.31.

[166] MCI Response at 7-8.

[167] *See* NECA Petition at 5; ORTC and TSTCI Joint Petition at 4.

[168] NECA Petition at 5.

[169] *Id.* at n.11.

that are served by number portability-capable switches. The terminating carriers query these calls in order to determine whether the called party has ported a number. The cost of these queries is passed on to the non-LNP capable LECs as query charges. In this instance, the queries are a direct result of the implementation of number portability in the neighboring area located within the EAS area. We find that the costs the non-LNP capable LECs incur for queries to areas within EAS calling plan areas are costs incurred as a result of the implementation of number portability and are also the costs of doing business within the EAS area.

53. We also find that the non-number portability capable LECs' customers, in this situation, receive direct benefits from the implementation of number portability in EAS calling plan areas. These customers' EAS calls are completed by a number portability-capable switch located within the EAS area; even though the non-number portability-capable LECs do not own the number portability-capable switches, the switches are a part of the EAS networks that complete calls from the non-number portability-capable LECs' customers. The query charges paid by the non-number portability-capable LECs recover the cost of performing the query and a portion of the number portability-capable LECs' implementation costs.[170] Moreover, these customers would have difficulty completing their calls within the EAS calling plan area without access to the number portability-capable switch. The benefits of number portability, therefore, extend to customers other than those of the number portability-capable LEC. We conclude, therefore, that a non-LNP capable LEC that participates in an EAS calling plan with any one of the 100 largest MSAs or with an adjacent number portability-capable LEC, may recover its costs for payment of query charges as eligible number portability costs through an end-user charge as set out in the *Third Report and Order* and explained in the *Cost Classification Order*.[171] We will not create a special category of cost recovery for small and rural carriers, and remain consistent with our decision in this regard as stated in the *Third Report and Order*.

54. We also allow these non-number portability-capable LECs to recover their LNPA charges through an end-user charge. Their customers also benefit from the creation and maintenance of the number portability administration database. Accurate location routing number (LRN) information promotes call completion for the customers of the non-number portability-capable LECs in EAS calling plan areas. These carriers are also distinct from competing local exchange carriers (CLECs) and the other unregulated telecommunications companies that pay LNPA charges because they lack an alternative method of recovering these costs and cannot include the cost in the price of another service. Although we are clarifying the language of the *Third Report and Order*, we are compelled, however, to affirm our prior decision that number portability costs should not be recovered through access charges.[172] We decline to allow the non-number portability-capable LECs to recover their eligible number portability costs in access charges as requested by the NECA because recovery through access charges would not

[170] *Cost Classification Order*, 13 FCC Rcd at 24511, paras. 40, 41 (Allocation of joint costs should be based on the capacity set aside to handle default, prearranged, and database queries).

[171] *Third Report and Order*, 13 FCC Rcd at 11773, para. 135; *Cost Classification Order*, 13 FCC Rcd at 24498-99, para. 6.

[172] *Third Report and Order*, 13 FCC Rcd at 11773, para. 135.

be competitively neutral as stated in the *Third Report and Order*.[173]

55. Our decision on this issue emphasizes the statement in the *Third Report and Order* that incumbent LECs are to recover carrier-specific number portability costs through end-user charges only when and where the end users are reasonably able to begin receiving the direct benefits of number portability. Those receiving direct benefits of number portability include the customers of small and rural incumbent LECs located within EAS calling plan areas that encompass portions of one of the 100 largest MSAs and/or other areas served by number portability-capable switches.[174] We also elaborate on the statement in the *Third Report and Order* that incumbent LECs may also assess a monthly charge only on end users it serves in the 100 largest MSAs, and end users it serves outside the 100 largest MSAs from a number portability-capable switch, by adding that the small and rural incumbent LECs that provide service through EAS calling plan agreements and are located adjacent to number portability-capable areas may assess a monthly charge on their end users. As parties to the EAS calling plan agreements, these carriers provide service to customers within their study areas in a number portability environment and calls from these customers are completed by number portability-capable switches located in the neighboring LEC's service area of the EAS calling plan area. The customers in the small and rural LECs' study areas, therefore, are connected to the number portability network through the EAS calling plans, and receive the direct benefit of completing their calls using the number portability-capable switches. The small and rural incumbent LECs are, thus, authorized to recover their query and LNPA costs that were incurred after our decision mandating LNP for a period of five-years using the same method that other incumbent LECs use to recover their costs.

56. Our decision also complies with the congressional mandate that number portability cost recovery mechanisms must be competitively neutral. Allowing the small and rural carriers located within EAS calling plan areas to recover their number portability costs prior to becoming number portability-capable does not give these carriers an incremental cost advantage over other carriers when competing for customers.[175] Once the carriers add number portability to their networks, they can recover the costs of establishing number portability, for a five-year period, through the same end-user charge through which they recover the query and LNPA costs. The small and rural carriers' costs will vary directly in proportion to the number of customers each carrier serves and the number of EAS calls their customers make to number portability-capable exchanges of adjoining LECs. In addition, our decision does not in any way affect competing service providers and, therefore, does not disparately affect the ability of the competing service providers to earn a normal return.[176]

57. NECA also suggests that a Fifth Amendment "takings" issue is presented by the *Third*

[173] *Id.* at 11725-26, 11773, paras. 39, 135. *Cf.* NECA *Ex Parte* Letter from Regina McNeil, NECA Senior Attorney, to Magalie Roman Salas, Secretary, FCC (filed Mar. 24, 2000) at 4; NECA Waiver at 4.

[174] *Third Report and Order* at 11776, paras. 142-143.

[175] *Id.* at 11731-32, para. 53.

[176] *Id.* at 11731-32, 11774, paras. 53, 136.

Report and Order.[177] NECA notes that the *Third Report and Order* requires carriers "to contribute to the support of number portability in adjacent regions" while "at the same time specifically forbids carriers from recovering those costs in their rates."[178] We disagree with NECA; this issue was addressed, and rejected, in the *Third Report and Order*.[179]

58. We consider the issue of whether the small and rural LECs should be allowed to recover costs that may be incurred to implement number portability functionality through a second end-user charge after or while these LECs recover the query and LNPA costs through an initial end-user charge. In order to comply with Congress' competitive neutrality requirement, we conclude that these carriers must be allowed an opportunity to recover all eligible LNP costs through the five-year federal cost recovery mechanism established in the *Third Report and Order*. We considered the costs associated with equipping a network with number portability functionality in the context of the tariff investigations and recognized in the *Third Report and Order* that the most significant portion of a carrier's cost will be incurred for this purpose.[180] To limit these companies to recovering only their query and LNPA costs may give other carriers an appreciable cost advantage over them or significantly impact their ability to earn a normal return. Incumbent LECs may recover query and LNPA costs through an end-user charge collected over one five-year period and may recover the costs of equipping their networks with number portability functions through an end-user charge collected over a different five-year period.[181] These five-year periods may run either consecutively or concurrently, in whole or in part, as may be determined by the Commission.

2. Recovery of Number Portability Costs from Other Carriers

a. Background

59. In the *Third Report and Order* the Commission determined that incumbent LECs may assess a monthly number portability end-user charge on resellers of the incumbent LEC's local service, as well as on purchasers of switching ports as unbundled network elements under section 251 of the Communications Act.[182] We reasoned that allowing the incumbent LECs to assess this charge was competitively neutral "because the reseller and the purchaser of the switch port will incur the [end-user] charge in lieu of costs they would otherwise incur in obtaining long-term number portability functionality elsewhere."[183] We noted that the unregulated reseller and

[177] NECA Petition at 4 n. 8.

[178] *Id.*

[179] *Third Report and Order*, 13 FCC Rcd at 11779, para. 149.

[180] *See id.*, 13 FCC Rcd at 11774, para. 137.

[181] This depends on when a carrier that participates in an EAS calling arrangement begins to equip its network with number portability functionality.

[182] *Third Report and Order*, 13 FCC Rcd at 11778, para. 146.

[183] *Id.*