Patrick H. Merrick, Esq.
Director – Regulatory Affairs
AT&T Federal Government Affairs

Suite 1000
1120 20th Street NW
Washington DC 20036
202 457 3815
FAX 202 457 3110

March 10, 2003

Via Electronic Filing

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W., Room TW-B204
Washington, DC 20554

Re: *Notice of Ex Parte Presentation*: Numbering Resource Optimization, CC Docket No. 99-200.

Dear Ms. Dortch:

Today, March 10, 2003, Robert Quinn Jr. and I met with Barry Ohlson, Legal Advisor to Commissioner Jonathan S. Adelstein to discuss AT&T's Petition for Reconsideration of the Commission's *Third NRO Order*[1]. AT&T emphasized that the size of the exogenous cost changes for Thousand Block Number Pooling ("TBNP") significantly exceed the original expectations set by much of the language contained in the *Third NRO Order.* We discussed the apparent inconsistencies between the *First NRO Order*[2], which indicated that cost recovery should be similar to that used in the local number portability proceedings and the *Third NRO Order*, which expresses the opposite view that numbering administration is inherently access-related and should be recovered as such[3]. We stated that the current system for recovery of these costs violates both Section 254(e) and 251(e) (2) of the Communications act. Section 251(e) requires the Commission to remove subsidies from access charges, and Section 251(e)(2) requires numbering administration costs to be recovered from all telecommuncaionts carriers in a competitively neutral manner. We also noted that no party opposed AT&T's petition and that WorldCom supported the petition and urged the Commission to take immediate action consistent with its petition.

[1] *In the Matter of Numbering Resource Optimization*, 17, FCC Rcd 4784 (2002) ("*Third NRO Order*")
[2] *Numbering Resource Optimization*, 15 FCC Rcd 7574, Para. 193 (2000)("*First NRO Order*")
[3] *Third NRO Order, Supra,* Para. 34.

AT&T provided Mr. Ohlson with a copy if its June 4, 2002 ex parte which is attached.

Consistent with the Commission rules, I am filing one electronic copy of this notice and request that you place it in the record of the proceedings.

Sincerely,

Peter H. Mott

Attachment

cc: Barry Ohlson

Patrick H. Merrick, Esq.
Director – Regulatory Affairs
AT&T Federal Government Affairs

Suite 1000
1120 20th Street NW
Washington DC 20036
202 457 3815
FAX 202 457 3110

June 4, 2002

Via Electronic Filing

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W., Room TW-B204
Washington, DC 20554

Re: *Notice of Ex Parte Presentation*: Numbering Resource Optimization, CC Docket No. 99-200; BellSouth Telecommunications Inc. Tariff FCC No. 1, Transmittal No. 629, WCB/Pricing No. 02-15; and Qwest Tariff FCC No. 1, Transmittal No. 120, WCB Docket No. 02-117.

Dear Ms. Dortch:

Please include a copy of the attached document in the above referenced proceedings.

Consistent with the Commission rules, I am filing one electronic copy of this notice and request that you place it in the record of the proceedings.

Sincerely,

Patrick H. Merrick

Attachment

cc: Jay Atkinson
Dorothy Attwood
Christopher Barnekov
Matthew Brill
Kyle Dixon
Jordan Goldstein
Daniel Gonzalez
Thaddeus Machcinski
Andrew Mulitz
Colleen Nibbe
Judith Nitsche
Tamara Preiss
Deena Shetler

NUMBER POOLING COSTS DO NOT BELONG IN ACCESS CHARGES

Submitted by AT&T Corp.
June 4, 2002
CC Docket No. 99-200

WCB Docket Nos. 02-15 and 02-117

Introduction and Summary

In order to promote competition in all telecommunications markets and, in particular, to curtail attempts by incumbent carriers to burden their existing and potential competitors through hidden subsidies, Congress, in the Telecommunications Act of 1996 ("1996 Act" or "Act"), expressly directed the Commission to make implicit subsidies explicit and to establish competitively neutral funding mechanisms for those explicit subsidies. Although the Commission has repeatedly recognized the Act's explicit subsidy and competitive neutrality requirements, the Commission's December 2001 number pooling cost recovery decision plainly violates both congressional directives . Specifically, after accepting three rounds of comments and issuing two extensive orders in the Number Resource Optimization ("NRO") docket -- each of which made clear that the Commission intended to adhere to its existing policies on cost recovery -- the Commission abruptly changed direction and held that incumbent local exchange carriers ("ILECs") may recover their costs of implementing thousands-block number pooling through access charges imposed on interexchange carriers ("IXCs").

The decision to embed number pooling costs in access charges is particularly troubling, not only because it contravenes the Act's intent to remove concealed subsidies, but because it directly violates Congress's mandate that costs be recovered in a competitively neutral manner. Rather than require each carrier to bear its own costs -- which would be the most equitable and efficient recovery mechanism -- the Commission's decision allows ILECs to impose much of the burden of their pooling costs on IXCs. It is ironic that while IXCs do not require new telephone numbers, ILECs (with their multiple telephone numbers to serve facsimile machines and Internet access), wireless carriers (many of which are ILEC affiliates), and competitive local exchange carriers ("CLECs") -- the drivers of telephone number exhaust -- will not be required to bear any of the costs of ILEC pooling implementation .

This policy reversal places unjustified burdens on IXCs at a time when long distance carriers are facing significant market pressures. Of all sectors of the telecommunications industry, IXCs are in perhaps the worst position to absorb new regulatory costs; in fact, they will not be able to do so. Rather, their customers will be forced -- disproportionately -- to bear the costs of ILEC pooling. This is particularly troubling given that one of the IXCs' main competitors, wireless all-distance "one rate" programs, are materially advantaged by the Commission's current cost recovery mechanism because wireless carriers do not pay access charges. Although the Commission may be concerned about the increasing number or size of end user surcharges to cover the costs of federal programs, the answer is not to shift those costs surreptitiously to long distance customers. Whether recovery is accomplished through access charges or line items, ultimately telecommunications consumers will pay for number pooling. The question is whether it is lawful to require one class of consumer to pay such a significant portion of the price tag through implicit, discriminatory subsidies.

Although the recovery mechanism is a clear departure from the Act's mandate, the Commission adopted a presumption against ILEC recovery for thousands-block number pooling. This presumption may have led many to believe there would little to no pooling cost recovery since the ILECs were awarded well in excess of three billion dollars for the closely related implementation of local number portability ("LNP"). The record plainly shows that the ILECs

understand the disproportionate burden the Commission's current cost recovery mechanism places on their competitors, and have sought to take full advantage of the situation. Indeed, only three of the ILECs have filed pooling tariffs to date, but they collectively seek recovery for costs exceeding a quarter of a billion dollars. Clearly, the Commission's hope that any attempted ILEC cost recovery for number pooling would be *de minimus* has been turned on its head.

Moreover, it appears that the ILECs have decided that the Commission's clear directions on which costs are eligible for recovery are merely informal suggestions that may or may not be followed. Even under the abbreviated time frame permitted under the Commission's rules for tariff review, it is evident to AT&T that the ILECs expect to recover from IXCs millions of dollars for costs already imposed on their own customers for LNP, and a myriad of costs explicitly disallowed by the Commission. Similarly, the ILECs have seemingly ignored the Commission's requirement that they take into account the cost savings (in terms of avoided or delayed area code relief and expansion of the North American Numbering Plan ("NANP")) that they will enjoy through pooling.

In sum, the Commission should rethink its decision to allow ILECs to recover number pooling subsidies in access charges, as well as reject all ILEC tariffs that fail to meet the Commission's explicit requirements for cost recovery.

Pooling Costs Should Not Be Recovered in Access Charges.

The Commission's decision to allow ILECs to recover pooling costs through access charges is patently unlawful, anticompetitive, and runs counter to everything the Commission and Congress have been trying to accomplish since the passage of the 1996 Act.

Cost Recovery Via Access Charges Constitutes Unlawful Implicit Subsidies.

As the United States Court of Appeals for the Fifth Circuit has held not once, but three times, "the plain language of § 254(e) does not permit the [Commission] to maintain *any* implicit subsidies."[1/] Congress anticipated that all access charges and rate structures would be free of hidden subsidies: "To the extent possible, the conferees intend that any support mechanisms continued or created under new section 254 should be explicit rather than implicit as many support mechanisms are today."[2/]

The Commission has repeatedly endorsed the 1996 Act's prohibition on implicit subsidies.[3/] For example, in the universal service context, the Commission has acknowledged that it must identify implicit support and remove it from interstate access charges.[4/] Indeed,

---

1/ *Texas Office of Public Utility Counsel* v. *FCC*, 183 F.3d 393, 425 (5th Cir. 1999) (emphasis in original); *see also COMSAT Corp.* v. *FCC*, 250 F.3d 931, 938 (5th Cir. 2001); *Alenco Comm.* v. *FCC*, 201 F.3d 608, 623 (5th Cir. 2000).

2/ S. REP. NO. 104-230, at 131 (1995); *see also id.* at 30 ("In establishing competitively neutral universal service support mechanisms the Committee expects that, consistent with the requirement to preserve and advance universal service, the FCC and the Joint Board will consider mechanisms that make implicit subsidies more explicit from access charges."); *id.* at 30 ("[I]n implementing any such cost allocation mechanism, the FCC and the Joint Board shall seek to insure that such allocation is explicit and applied in a competitively neutral manner.").

3/ *See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service*, 15 FCC Rcd 12962, ¶¶ 185-232 (2000).

4/ *See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, 12 FCC Rcd 15982, ¶¶ 5-8 (1997), *aff'd sub nom., Southwestern Bell v. FCC*, 153 F.3d 523 (8th Cir. 1998); *see also Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, 16 FCC Rcd 19613, ¶¶ 8, 138 (2001) (concluding that leaving the removal of implicit support to the discretion of individual carriers is neither consistent with the mandate of the 1996 Act nor justified from a public policy standpoint); *Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610, ¶ 32 (2001) ("Congress in the 1996 Act directed [the] Commission and the states to reform universal service, and in particular, to eliminate implicit subsidies contained in access charges and instead make all universal service support explicit.").

Chairman Powell has emphasized on many occasions that the Commission has a strong "commitment to reforming universal service to make [access] subsidies more explicit and portable,"[5/] and that the agency "must not quaver in [its] resolve to make that which is implicit explicit."[6/]

The statutory prohibition on implicit subsidies extends to all contribution requirements. Thus, in creating a cost recovery mechanism for LNP -- a congressional mandate that forms the technical basis for number pooling -- the Commission determined that recovery through access charges would be entirely inappropriate.[7/] The Commission's decision to allow number pooling cost recovery through access charges simply cannot be reconciled with the plain statutory language or the Commission's own prior decisions.

Cost Recovery Via Access Charges Is Not Competitively Neutral.

Recovering pooling costs through access charges also violates the competitive neutrality requirements established in Section 251(e)(2) of the Act. Section 251(e)(2) expressly requires numbering administration costs to be "borne by all telecommunications carriers on a competitively neutral basis."[8/] In contrast to that express command, the current system -- and the ILECs' proposed tariffs -- place hundreds of millions of dollars in pooling costs on only one segment of the industry -- the IXCs.

Until last December, the Commission appeared to accept the premise that pooling costs did not belong in access charges. In fact, in the *First NRO Order*, the Commission determined that if it were to establish a pooling cost recovery mechanism for ILECs, the mechanism should adhere to the standards it previously established for LNP.[9/] In the LNP proceeding, the Commission squarely rejected the use of access charges to recover local number portability costs, and suggested that doing so would not be competitively neutral.[10/] Moreover, virtually every commenter in the NRO proceedings that opined on this issue agreed that the market conditions and reasoning that led to the Commission's conclusion in the LNP context were fully

---

5/ *Low-Volume Long-Distance Users*, Separate Statement of Commissioner Powell, 15 FCC Rcd 6298 (1999).

6/ *Federal-State Joint Board on Universal Service*, Statement of Commissioner Powell, 14 FCC Rcd 20432 (1999); *see also Federal-State Joint Board on Universal Service*, Separate Statement of Commissioner Powell, 14 FCC Rcd 8078 (1999) (stating that eliminating support from access charges has "some important merits").

7/ *See Telephone Number Portability*, 13 FCC Rcd 11701, ¶ 135 (1998) ("*LNP Order*").

8/ 47 U.S.C. § 251(e)(2).

9/ *See Numbering Resource Optimization*, 15 FCC Rcd 7574, ¶ 193 (2000) ("*First NRO Order*").

10/ *See LNP Order*, ¶ 135 ("Because number portability is not an access-related service and IXCs will incur their own costs for the querying of long-distance calls, we will not allow LECs to recover long-term number portability costs in interstate access charges. Nor would it likely be competitively neutral to do so.").

applicable to thousands block pooling cost recovery.[11/] Even the ILECs argued (and continue to argue) that it makes no sense to place pooling costs in access charges.[12/]

The current cost recovery scheme imposes a substantial competitive disadvantage on IXCs relative to other carriers, such as wireless carriers and the ILECs themselves. Placing pooling costs in access charges forces long distance carriers, like AT&T, which are also CLECs to "pay twice;" first, by covering their own pooling expenses and, second, by absorbing a substantial portion of ILECs' costs. In addition, the Commission has acknowledged that traditional wireline IXCs and wireless carriers increasingly compete for the same customers, and that the growth of wireless carriers "appears to be causing a significant migration of interstate telecommunications revenues from wireline to mobile wireless providers."[13/] The ILECs' ownership interest in the wireless carriers makes this particularly troubling, because the ILECs benefit from potential increases in wireless subscribership that would be driven in part by the increased costs placed upon IXCs by their own cost recovery mechanisms.[14/] Permitting the ILECs to shift the burden of their pooling implementation costs onto their competitors' long distance customers would cause substantial market distortions, in direct violation of the Act. Moreover, a system that permits ILECs to earn supracompetitive profits on bottleneck facilities would be directly contrary to the Commission's often stated goal of reducing access charges to cost.[15/] The cost recovery scheme adopted in the *Third NRO Order* is the antithesis of competitive neutrality -- and thus violates Section 251(e)(2).

11/ *See id.*, ¶ 39 ("If the Commission ensured the competitive neutrality of only the distribution of costs, carriers could effectively undo this competitively neutral distribution by recovering from other carriers. For example, an incumbent LEC could redistribute its number portability costs to other carriers by seeking to recover them in increased access charges to IXCs.").

12/ *See, e.g.*, *Qwest Corp. v. FCC*, No. 02-1127, Qwest Corp. Statement of Issues To Be Raised on Appeal (D.C. Cir., filed May 16, 2002) (stating that "it was arbitrary and capricious for the FCC to prohibit Qwest and other incumbent LECs from recovering through an end-user surcharge their costs of implementing number pooling"); Comments of BellSouth on Second NRO FNPRM, CC Docket No. 99-200, at 29 (filed Feb. 14, 2001); Comments of SBC on Second NRO FNPRM, CC Docket No. 99-200, at 27 (filed Feb. 14, 2001); Comments of Sprint on Second NRO FNPRM, CC Docket No. 99-200, at 19 (filed Feb. 14, 2001); Comments of Verizon on Second NRO FNPRM, CC Docket No. 99-200, at 6 (filed Feb. 14, 2001).

13/ *Federal-State Joint Board on Universal Service,* 17 FCC Rcd 3752, ¶ 11 (2002).

14/ *See* Reuters Company News, *SBC bundling wireline, Cingular wireless service* (May 30, 2002), *available at* http://biz.yahoo.com/rc/020530/telecoms_sbc_cingular_1.html.

15/ *See Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long-Distance Users; Federal-State Joint Board on Universal Service*, 15 FCC Rcd 12962, ¶ 75 (2000); *see also Texas Office of Pub. Util. Counsel, et al. v. FCC,* 183 F.3d 393, 425 (5th Cir. 1999) (holding ILECs' "flow through" of universal service contributions to IXCs via higher interstate access charges violates the statutory prohibition on implicit subsidies in Section 254).

While the long distance industry today is ill equipped to handle further attacks on its competitive and economic positions, ultimately it is long distance *consumers* that will feel the impact of the Commission's decision to permit cost recover through access charges. As discussed below, the enormous costs ILECs seek to recover through their pooling tariffs simply cannot be absorbed as a cost of doing business. They will have to be passed on to customers in the form of higher rates. At a time when IXCs are struggling to keep their existing customers happy through rock-bottom rates, it makes no sense whatsoever to impose the burden of bearing ILEC number pooling costs on IXCs and their customers. This unlawful decision is bad for competition, bad for consumers, and bad for the public interest. It should be reversed.

Adding Pooling Costs to the Existing LNP Line Item Is Far More Consistent with the Act's Explicit Subsidy and Competitive Neutrality Requirements.

In light of the perverse incentives caused by regulatorily established cost recovery regimes, AT&T has long advocated that all carriers, including ILECs, should be required to bear their own carrier-specific costs. AT&T continues to believe that this would be the most competitively neutral and efficient approach toward pooling cost recovery. If the Commission is not inclined to forgo a formal recovery mechanism for ILEC pooling costs, however, AT&T proposes that the Commission allow ILECs to recover their costs through a modest addition to the LNP line item on their end user bills.

Although the Commission is appropriately concerned with the creation of yet another surcharge on consumers, it fails to recognize that consumers are going to pay for ILEC pooling -- albeit indirectly -- even through an access charge recovery mechanism. Unlike access charge recovery, which has the potential to require a noticeable hike in long distance rates, however, the addition of number pooling costs to the LNP line item should not increase the end user charge significantly. Indeed, the ILECs' own estimates showed that the costs of number pooling would only add pennies per month to the surcharge already imposed on ILEC customers.[16/] Although AT&T believes that ILECs should be required to bear their own pooling implementation costs, allowing them to increase the LNP line item is far more equitable to competing carriers and would have a much smaller impact on consumers than using access charges as a point of recovery.

The Commission Should Reject the ILECs' Pooling Cost Recovery Tariffs.

Even if cost recovery through access charges could, in theory, be reconciled with the statute, the particular access charge tariffs that the ILECs have filed are plainly unjust and unreasonable. The Commission's public interest obligations require it to review thoroughly any mechanism under which carriers propose to foist such enormous costs on one segment of the telecommunications industry -- and ultimately their customers. This is especially the case given that review of the tariffs filed by the ILECs to date demonstrates that they are seeking to recover

---

16/ *See, e.g.*, Comments of Bell Atlantic on NRO NPRM, CC Docket 99-200, at 33-34 (filed July 30, 1999) (urging the Commission to allow it to recover pooling costs "by increasing its existing number portability surcharge by the five cents that its expects would be necessary to recover [those] costs").

costs far in excess of those eligible under the Commission's directives. The tariffs plainly do not satisfy the Commission's three-part test because they seek recovery of costs associated with numbering administration functions, LNP, and network upgrades, which already have been paid for by consumers or were not incurred because of pooling implementation. Nor have the ILECs acknowledged that pooling deployment ultimately will save them money by reducing the need for area code relief and delaying the replacement of the existing NANP.

The ILECs' Pooling Tariffs Seek To Recover Costs Radically in Excess of the Figure Anticipated by the Commission or Other Carriers.

When the Commission concluded last December that inclusion of pooling costs in access charges would be competitively neutral, it indicated that it believed that the "extraordinary" costs of implementing thousands-block number pooling, if ***any***, would be minimal. In particular, the Commission stated that "many of the costs associated with thousands-block number pooling are ordinary costs for which no additional or special recovery is appropriate."[17/] Moreover, the Commission repeatedly asserted that it expected that implementation of pooling would result in an overall *decrease* in costs for the ILECs.[18/] For these reasons, the Commission expressly limited recovery of number pooling costs to extraordinary implementation costs and specified that carriers seeking an exogenous adjustment must overcome a *rebuttable presumption* that no recovery beyond that already in rates is justified.[19/]

In their recent tariff filings, the ILECs purport to adhere to the Commission's instructions, yet their cost recovery proposals plainly demonstrate otherwise. To date, only three of the major price cap ILECs have filed tariffs seeking an exogenous adjustment for pooling implementation costs -- BellSouth, Qwest, and Sprint. The adjustments they seek, however, are enormous: BellSouth's tariff includes a $64 million increase, Qwest's $120 million, and Sprint's $80 million. These three proposed adjustments already exceed a quarter of a billion dollars, and extrapolated to the entire industry, exogenous adjustments for pooling costs could surpass a half billion dollars, more than half of which is to be recovered through switched access rates. Moreover, the significant variation among the ILECs' cost claims is in itself grounds for skepticism, as the Commission found in the LNP context.[20/]

The huge disparity between the Commission's stated expectations and the tariffs filed thus far, as well as the disparities among the ILECs themselves, should lead the Commission to question whether these costs may legitimately be recovered and to investigate carefully those

---

17/ *Third NRO Order*, ¶ 25.

18/ *See id.*, ¶ 40 ("[u]nlike other mandates of the Commission, thousands-block number pooling may reduce network costs"); *see also id.* ¶ 25. That is why the Commission established a "rebuttable presumption that *no* additional recovery is justified." *Id.* ¶ 39 (emphasis added).

19/ *See id.*, ¶ 39.

20/ In an order on the ILECs' LNP tariffs, the Commission found that fact that U S WEST's LNP cost claims were so much higher than those of the other ILECs was grounds to suspect U S WEST had inflated its claims. *See Long-Term Number Portability Tariff Filings, U S West, Communications, Inc.*, 14 FCC Rcd 11983, ¶¶ 7, 9, 21 (1999).

tariffs already filed by BellSouth, Qwest, and Sprint, as well as those tariffs that may be filed in the future. As the Commission recognizes, its requirements for the recovery of number pooling costs place a high burden on carriers.[21/] That burden has not been met.

The ILECs Are Attempting To Recover Costs Far Beyond those Rightfully Attributable to Number Pooling.

Although grossly excessive, the ILEC cost claims for number pooling are hardly surprising. The LNP proceedings were replete with examples of the ILECs' attempts to recover expenses that did not satisfy the Commission's requirements. The ILECs repeatedly filed deficient LNP tariffs and forced both the Commission staff and affected parties to comb through extensive filings time and again to root out utterly untenable cost claims. Ultimately, the Commission disallowed roughly $900 million in costs claimed in ILEC LNP tariffs.[22/] The pooling cost recovery tariffs filed to date suggest that there is every reason to believe that the Commission's criteria -- although plainly spelled out in the NRO orders -- are again being ignored.

Starting with the cost studies filed by the ILECs in response to the Commission's requests for information in the NRO proceeding, the Commission has recognized "that some carriers may have included costs that are inappropriate under the test for extraordinary recovery."[23/] Importantly, the Commission noted that some of the cost items in the studies were very similar to the cost claims rejected in the LNP proceedings.[24/] The deficiencies in these filings led the Commission to provide carriers with detailed guidance on exactly which pooling costs are recoverable and which are not. Nevertheless, the ILECs have filed number pooling tariffs seeking to recover millions of dollars of expenses that do not come close to satisfying the Commission's criteria.[25/] Indeed, having failed to pass muster with its first tariff, BellSouth quickly filed a second, but made virtually no effort to correct most of the problems of the

---

21/ *See BellSouth Tariff FCC No. 1 Transmittal No. 623, Qwest Tariff FCC No. 1 Transmittal No. 120*, 17 FCC Rcd 6013, ¶ 5 (2002) ("*BellSouth/Qwest Tariff Order*"). Indeed, to be eligible for such extraordinary recovery, thousands-block number pooling costs must satisfy each of three criteria. "First, only costs that would not have been incurred 'but for' thousands-block number pooling are eligible for recovery. Second, only costs incurred 'for the provision of' thousands-block number pooling are eligible for recovery. Finally, only 'new' costs are eligible for cost recovery." *Third NRO Order*, ¶ 43.

22/ *See FCC Investigation Produces Lower Number Portability Charges for Customers of U S West Communications, Inc.*, News Release, 1999 LEXIS 3656 (rel. July 9, 1999). As a result of that investigation, "the amount consumers will pay for local number portability [was] reduced by almost $900 million." *Id.*

23/ *Third NRO Order*, ¶ 42.

24/ *See id.*, ¶ 42.

25/ *See, e.g., BellSouth/Qwest Tariff Order*, ¶ 10; *Sprint Local Telephone Companies Tariff FCC No. 3 Transmittal No. 192*, WCB/Pricing No. 02-10, Order, DA 02-898, ¶ 8 (rel. Apr. 18, 2002).

original.[26/] Rather than reward the ILECs for repeatedly placing the onus on Commission staff and other carriers to seek out the illegitimate cost claims hidden in their tariffs, the Commission should send the ILECs back to the drawing board with a clear mandate to follow both the letter and spirit of the cost recovery rules. If the ILECs choose once again to ignore these directives, there is no reason for the Commission to continue to maintain a cost recovery mechanism for number pooling. Rather, like every other carrier, ILECs should be responsible for their own carrier-specific pooling costs.

Notwithstanding whether ILECs are permitted to recover their costs through access charges or an end user charge, it remains incumbent on the Commission to review their cost recovery tariffs carefully. In the LNP context, the Commission implemented a line item recovery mechanism, but also took the time and effort -- along with other interested parties (including AT&T) -- to investigate each ILEC tariff filed to ensure that they were not recovering costs that were not properly attributable to the deployment of LNP. As a result of those investigations, the Commission was able to save consumers enormous sums of money by disallowing a substantial number of some ILECs' purported costs.[27/] Even in a line item regime, ILECs retain the incentive and the ability to harm competition through excessive recovery. Accordingly, the Commission should scrutinize the ILEC pooling tariffs to exclude illegitimate cost claims regardless of whether access charges or line items are used for recovery.

26/ See *BellSouth Telecommunications, Inc. Tariff FCC No. 1 Transmittal No. 629*, WCB/Pricing No. 02-15, Order, DA 02-1100, ¶ 8 (rel. May 10, 2002).

27/ *See, e.g.*, *Long-Term Number Portability Tariff Filings*, 14 FCC Rcd 11883, ¶ 40 (1999) (noting misapplication or disregard of cost recovery standard requiring disallowances to claimed OSS costs); *id.* ¶ 67 (observing Ameritech unjustifiably including signaling and switching costs and Pacific and SWBT including such costs that did not meet Commission's requirements); *id.* ¶ 95 (finding overhead costs claimed by Pacific and SWBT unreasonably high); *FCC Investigation Produces Lower Number Portability Charges for Customers of U S West Communications, Inc.*, News Release, 1999 LEXIS 3656 (rel. July 9, 1999).

Conclusion

For years, it has been a basic tenet of Congress's and the Commission's telecommunications policy that allowing subsidies into access charges impairs competition and ultimately harms consumers. While the Commission may have believed that strict adherence to this policy in the context of number pooling was unnecessary because the costs involved would be inconsequential, the recently-filed ILEC pooling tariffs have demonstrated that the agency's expectations were, to say the least, optimistic. BellSouth, Qwest, and Sprint are claiming enormous pooling implementation costs, which, if accepted by the Commission, have the serious potential to impair the ability of IXCs to serve their customers. SBC and Verizon have not submitted tariffs yet, though there is no reason to believe that their cost claims will be any more legitimate or any less exorbitant. Rather than impose untenable and anticompetitive burdens on the long distance industry and long distance consumers, the Commission should move pooling cost recovery out of access charges and into the existing LNP line item. And, even after that step, it should continue to scrutinize the ILEC tariffs and disallow recovery for the vast bulk of their claimed pooling costs.