

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

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)	
Telephone Number Portability)	CC Docket No. 95-116
)	
BellSouth Petition for)	
Declaratory Ruling and/or)	
Waiver Regarding Cost Recovery)	
of Wireless Local Number)	
Portability From End-Users)	

To: Chief, Wireline Competition Bureau

COMMENTS OF VERIZON WIRELESS

Verizon Wireless submits these comments on the above-referenced *Petition for Declaratory Ruling and/or Waiver* (“*Petition*”) filed November 14, 2003 by BellSouth Corporation, on behalf of its local exchange carrier affiliate BellSouth Telecommunications, Inc. (“BellSouth”).¹ As discussed below, Verizon Wireless generally supports BellSouth’s request or declaratory ruling, but only as long as the Commission also clarifies that carriers cannot recover the same costs from other carriers. BellSouth has indicated that it will assess Verizon Wireless multiple transaction charges to recover a number of wireless porting-related expenses, yet none of this revenue is referenced in BellSouth’s *Petition*. In reviewing the *Petition*, the Commission should make clear that BellSouth cannot assess other carriers to recover porting-related costs and

¹ See *Pleading Cycle Established In BellSouth Petition For Declaratory Ruling and/or Waiver Regarding Cost Recovery of Wireless Local Number Portability from End Users*, Public Notice, DA 03-3779 (rel. November 24, 2003).

that an end-user surcharge is the *only* appropriate manner for incumbent local exchange carriers (“LECs”) to recover number portability charges. The Commission should declare that any LEC-imposed carrier-to-carrier porting charges are prohibited. In the event that the Commission does not so declare, BellSouth should not be permitted to adjust its end-user LNP charge until there is a full accounting of all of its inter-carrier LNP assessment revenue, so as to preclude double recovery.

The Commission should also monitor the provision of wireless LNP by BellSouth to ensure that it is effectively providing the services to its customers for which it seeks recovery. Given the cost recovery, customers should be able to expect that requests to port landline numbers to wireless carriers will be completed within the FCC’s prescribed four-day porting interval.²

I. THE COMMISSION SHOULD DECLARE THAT INCUMBENT LECS MAY RECOVER LNP COSTS ONLY THROUGH AN END-USER CHARGE

BellSouth requests that the Commission issue a declaratory ruling that incumbent LECs are entitled to a reasonable opportunity to recover the costs to implement wireless local number portability (“WLNP”) pursuant to Section 251(e)(2) of the Communications Act of 1934, as amended (“Act”), 47 U.S.C. § 251(e)(2), the Commission’s cost recovery order,³ and the

² The Commission should also ensure that BellSouth is fulfilling its obligation to route calls to ported numbers as an N-1 carrier. During the first month of wireless LNP, some LECs have failed to correctly route calls to or from numbers that have been ported to or from wireless carriers. If there are additional costs associated with such routing obligations, the Commission should direct carriers to use authorized cost recovery methods to recoup such costs. Carriers should be prohibited however from mis-routing calls from or to ported numbers.

³ *Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701 (1998) (“*LNP Third Report and Order*”).

Commission’s implementing rules,⁴ through charges imposed on end-users (other than Lifeline subscribers). To that end, BellSouth requests that the Commission waive Section 52.33(a)(1) of its rules to allow BellSouth to modify its current federally tariffed end-user local number portability charge by extending the cost recovery period beyond the maximum five years and/or modifying the current rate.

Section 251(b)(2) of the Act requires all LECs to provide, to the extent technically feasible, number portability to all telecommunications carriers, including both wireline service carriers and commercial mobile radio service (“CMRS”) carriers, in accordance with requirements prescribed by the Commission.⁵ As BellSouth explains,⁶ CMRS carriers are explicitly excluded from the statutory definition of LEC, except to the extent that the Commission finds that a CMRS service should be included in the definition,⁷ a finding that the Commission has not made. Even though CMRS carriers are not LECs, the Commission nevertheless found that the public interest would be served by intermodal LNP – that is, LNP that would allow number portability among wireline service providers and broadband CMRS providers, as well as among broadband CMRS providers.⁸ The Commission concluded that it

⁴ 47 C.F.R. §§ 52.32-52.33.

⁵ 47 U.S.C. § 251(b)(2).

⁶ *Petition* at 3.

⁷ 47 U.S.C. § 153(26).

⁸ *See Telephone Numbering Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996) (“*LNP First Report and Order*”) at ¶ 155.

had independent statutory authority to adopt rules requiring intermodal LNP under Sections 1, 2, 4(i) and 332 of the Act, and that it did not need to rely on Section 251.⁹

Verizon Wireless supports BellSouth's request that the Commission expressly rule that "the *only* permissible way for incumbent LECs to recover their WLNP costs is through an end-user charge."¹⁰ The Commission has ruled that all telecommunications carriers must bear in a competitively neutral manner the costs of providing long-term number portability¹¹ and that incumbent LECs should be allowed to recover their costs "from their own customers."¹²

Verizon Wireless sees no reason why this cost recovery should not include the costs of porting with wireless carriers.

II. THE COMMISSION SHOULD NOT PERMIT INCUMBENT LECS TO RECOVER LNP COSTS THROUGH CARRIER PORTING CHARGES

⁹ *Id.* at ¶ 153 *citing* 47 U.S.C. §§ 151, 152, 154(i) and 332. Thus, although the Commission should grant BellSouth's *Petition* regarding intermodal LNP at least in part, the Commission should not rely on Section 251 of the Act. *See also Opposition of Verizon Wireless To LEC Waiver Petitions*, CC Docket No. 95-116, October 17, 2003 at 4-6 (explaining why statutory LNP exemptions under Section 251(f) do not apply to intermodal LNP because the Commission did not impose the intermodal LNP requirement pursuant to Section 251).

¹⁰ *Petition* at 7 (emphasis supplied).

¹¹ *LNP First Report and Order* at ¶ 8.

¹² *Id.* at ¶ 136.

As stated by BellSouth, “[t]he Commission rules do not allow [LECs] any other recovery method” for LNP costs besides the end-user surcharge.¹³ In the first month of porting, however, Verizon Wireless has learned that BellSouth will impose a number of transaction-based charges on wireless carriers that request to port BellSouth customer numbers. These charges include a \$15 per port charge if carriers send requests through a fax-based system; a \$3.50 per port charge

¹³ *Petition at 7.*

if carriers use BellSouth's "GUI," an hourly-rated "coordination fee" for out-of-hours or special arrangement "cut-overs" (such as certain multi-line business requests); and a fee for migrating numbers from "Type-1" to "Type-2" to facilitate porting. These charges are inconsistent with the Commission's cost recovery mechanism for incumbent LECs, described above. Therefore, in making the requested declaratory ruling, the Commission also should clarify that BellSouth's current practice of purporting to charge broadband CMRS carriers various fees for each wireline number ported to the CMRS carrier is inconsistent with FCC rules and unlawful.

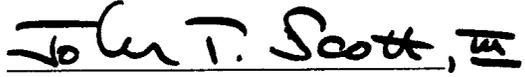
In the event the Commission does not make clear that BellSouth's carrier-to-carrier charges are forbidden, the Commission should be vigilant to ensure that BellSouth accounts for any cost recovery it has obtained and will obtain from wireless carriers. If BellSouth is recovering its porting expenses through carrier charges, permitting recovery also from end-users would result in double-recovery.

CONCLUSION

For the foregoing reasons, the Commission should confirm that its cost recovery mechanism for incumbent LECs' wireless LNP costs precludes carrier-to-carrier porting charges and allow BellSouth to recover legitimate porting-related costs through sanctioned assessments on its end-user customers.

Respectfully submitted,

VERIZON WIRELESS

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Certificate of Service

I hereby certify that on this 22nd day of December, copies of the foregoing “Comments of Verizon Wireless” in CC Docket 95-116 were sent by hand delivery or e-mail to the following parties:

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