

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of  
Number Portability

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CC Docket No. 95-116

**SBC COMMUNICATIONS INC.'S COMMENTS  
ON BELL SOUTH CORPORATION'S  
PETITION FOR DECLARATORY RULING  
AND/OR WAIVER**

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## TABLE OF CONTENTS

Table of Contents .....	ii
Summary and Introduction .....	1
Comments .....	4
A. Overview of Long-Term Number Portability .....	4
B. The Commission Authorized Incumbent LECs to Recover the Costs of Implementing LNP Through an End-User Charge .....	6
C. SBC's Current End-User Charge Does Not Include Costs for Implementing WLNP .....	6
D. A Waiver of Commission Rule 52.33 for BellSouth and All Similarly Situated LECs is in the Public Interest .....	10
Conclusion .....	14



The Telecommunications Act of 1996 requires LECs “to provide, to the extent feasible, number portability in accordance with the requirements prescribed by the Commission.”<sup>7</sup> Pursuant to this statutory mandate, the Commission, in 1996, required LECs to implement local number portability (LNP). Although the Act excludes CMRS providers from the definition of local exchange carrier, and therefore from the section 251(b) obligation to provide number portability, the Commission also required CMRS providers to provide LNP.

In its *Second Report and Order*, issued a year later, the Commission adopted recommendations from the North American Numbering Council (NANC) for the implementation of wireline-to-wireline number portability.<sup>8</sup> At the same time, however, the Commission recognized that “changes to LNP processes would need to be made to accommodate porting to wireless carriers.”<sup>9</sup> Specifically, the Commission noted that “the industry, under the auspices of NANC, will probably need to make modifications to local number portability standards and processes as it gains experience in implementing number portability and obtains additional information about incorporating CMRS providers into a long-term number portability solution and interconnecting CMRS providers with wireline carriers already implementing their number portability obligations.”<sup>10</sup> The Commission therefore directed the NANC to develop standards and procedures necessary to provide for wireless carriers’ participation in LNP. The NANC subsequently issued a number of reports on these issues in which it did not reach consensus.

As the industry and the Commission worked to address the standards, protocols, and technical aspects of WLNP, the Commission effectively put on hold the implementation of WLNP, including inter-modal WLNP (i.e., wireline-to-wireless and wireless-to-wireline number

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<sup>7</sup> 47 U.S.C. § 251(b)(2).

<sup>8</sup> *Telephone Number Portability*, Second Report and Order, 12 FCC Rcd 12281 (1997).

<sup>9</sup> See *Telephone Number Portability*, CC Docket No. 95-116, FCC 03-284, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, released Nov. 10, 2003 (*Intermodal Porting Order*) at ¶ 10.

<sup>10</sup> *Id.* citing *Telephone Number Portability*, Second Report and Order, 12 FCC Rcd. 12281 (1997) at 12333, ¶ 90.

portability).<sup>11</sup> On November 10, 2003, the Commission issued a declaratory ruling holding that “as of November 24, 2003, LECs must port numbers to wireless carriers where the requesting wireless carrier’s ‘coverage area’ overlaps the geographic location of the rate center in which the customer’s wireline number is provisioned, provided that the porting-in carrier maintains the number’s original rate center designation following the port.”

The Commission has authorized incumbent LECs to recover the costs of implementing LNP through a tariffed, monthly charge on end users. Incumbent LECs can only recover the costs of implementing LNP through that end-user charge. Other telecommunications carriers, in contrast, may recover their costs by any lawful means. When the present cost-recovery method was devised, the Commission limited recovery of LNP costs to the five-year period following the date on which the LNP monthly end-user charge took effect. This limitation is codified in Commission rule 52.33.

BellSouth contends that a waiver of this rule is appropriate and in the public interest. For the reasons discussed below, SBC agrees and asks the Commission to waive the rules, not only for BellSouth, but for all similarly situated incumbent LECs. First, like BellSouth, SBC has incurred, and will continue to incur, substantial, additional costs to implement inter-modal WLNP. Given the state of the deployment of WLNP at the time the existing end-user charges were tariffed, SBC and other incumbent LECs could not, and did not, include these direct costs of implementing inter-modal WLNP in their tariffed cost recovery charge. Consequently, it would be unreasonable to bar recovery of those costs now. Second, carriers will not bear the costs of implementing LNP “on a competitively neutral basis” in accordance with section 251(e) of the Act if incumbent LECs are not allowed to recover costs that other carriers are free to recover. Third, and relatedly, because the costs of implementing WLNP could not reasonably have been included in incumbent LECs original tariffed charges, and because, absent a waiver,

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<sup>11</sup> See *Intermodal Porting Order* at n. 12: “[t]he requirement that LECs port numbers to wireless carriers has not been applied previously due to extensions of the deadline for wireless carriers’ implementation of LNP.”

incumbent LECs would be the only carriers unable to recover these costs, principles of equity and sound public policy dictate that the requested waiver be granted. Fourth, the waiver request would in no way undermine the goals underlying the cost recovery rule established for incumbent LECs. Fifth, in keeping with the Commission's desire that the end-user charge coincides with the time and place end users begin receiving the benefits of LNP, the end-user charge for WLNP would be assessed at the same time that WLNP became available.

SBC urges the Commission to grant BellSouth's petition and extend the same benefits to all similarly situated incumbent LECs. Allowing those incumbent LECs to recover the costs of implementing inter-modal WLNP now would be consistent with the intent of Congress in mandating LNP in section 251, appropriate under the cost-recovery scheme devised by the Commission in the *Third Report and Order*, and in the public interest.

## **Comments**

### **A. Overview of Local Number Portability**

Almost eight years ago, Congress enacted the Telecommunications Act of 1996. As part of Congress's effort to introduce competition into the local exchange market, Congress required, among other things, that LECs "provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."<sup>12</sup> In the *First Report and Order*, the Commission found that wireline LNP would be technically feasible and available for deployment in mid-1997 and established a schedule under which LECs would implement it.<sup>13</sup>

In the same order, the Commission also required certain commercial mobile radio services (CMRS or wireless) providers<sup>14</sup> to provide LNP. Although wireless carriers are not

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<sup>12</sup> 47 U.S.C. § 251(b)(2). Number portability is defined as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." 47 U.S.C. § 153(30).

<sup>13</sup> *First Report and Order*, ¶¶ 74, 77.

<sup>14</sup> These providers were cellular providers, broadband personal communications services providers, and covered Specialized Mobile Radio providers (as defined in *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, First Report and Order, FCC 96-263 (adopted June 12, 1996)).

LECs<sup>15</sup> and, thus, are not subject to the same obligation imposed by section 251(b)(2), the Commission found that it “possess[ed] independent authority under sections 1, 2, 4(i), and 332 of the Communications Act of 1934, as amended, to require CMRS providers to provide number portability.”<sup>16</sup> The FCC, however, delayed implementation of WLNP, because the Commission found that WLNP would not be technically feasible at the same time that wireline LNP would.<sup>17</sup> The initial compliance date for wireless carriers was June 30, 1999.

Due to lingering technical and operational issues relating to WLNP, the Commission extended the implementation date for WLNP three times. In 1998, the Wireless Telecommunications Bureau extended the original deadline to March 31, 2000.<sup>18</sup> In 1999, the Commission extended the deadline again — this time to November 24, 2002.<sup>19</sup> Finally, in 2002, the Commission extended the deadline to November 24, 2003.<sup>20</sup> At the same time, as the date for WLNP was postponed, and as questions remained regarding the specifics of the wireline to wireless porting obligation, the implementation of inter-modal porting was likewise deferred.<sup>21</sup> Today, WLNP is a reality, and both LECs and wireless providers are obligated to provide number porting.

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<sup>15</sup> 47 U.S.C. § 153(26) (“[The term ‘local exchange carrier’] does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of such term.”).

<sup>16</sup> *First Report and Order*, ¶ 153.

<sup>17</sup> *Id.* ¶¶ 165-66. The Commission recognized that there were “CMRS-specific issues” that needed to be resolved before wireless carriers would be in a position to provide LNP. The Commission also realized that wireless carriers “face[d] technical burdens unique to the provision of seamless roaming on their networks, and standards and protocols [would] have to be developed to overcome these difficulties.” *Id.* ¶ 164.

<sup>18</sup> *Telephone Number Portability; Petition for Extension of Implementation Deadlines of the Cellular Telecommunications Industry Association*, CC Docket No. 95-116, Memorandum Opinion and Order, 13 FCC Rcd 16315 ¶ 7 (Wireless Tel. Bur. 1998).

<sup>19</sup> *Cellular Telecommunications Industry Association’s Petition for Forbearance From Commercial Mobile Radio Services Number Portability Obligations; Telephone Number Portability*, WT Docket No. 98-229; CC Docket No. 95-116, Memorandum Opinion and Order, 14 FCC Rcd 3092 ¶ 37 (1999).

<sup>20</sup> *Verizon Wireless’s Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation; Telephone Number Portability*, WT Docket No. 01-184, CC Docket No. 95-116, Memorandum Opinion and Order, 17 FCC Rcd 14972 ¶ 34 (2002).

<sup>21</sup> *Intermodal Porting Order* at n. 12.

**B. The Commission Authorized Incumbent LECs to Recover the Costs of Implementing LNP Through an End-User Charge**

The Act specifically provides that the cost of number portability “shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”<sup>22</sup> In the *Third Report and Order*, the Commission established a two-part test to gauge the competitive neutrality of LNP cost recovery. In particular, it found that “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.”<sup>23</sup>

Applying these principles, the Commission authorized incumbent LECs to recover their costs of providing LNP through a federally tariffed, monthly charge on end users for a period not to exceed five years.<sup>24</sup> The Commission specifically precluded incumbent LECs from recovering their costs through any other mechanism. Other telecommunications carriers were permitted to “recover their carrier-specific costs directly related to providing long-term number portability in any lawful manner.”<sup>25</sup>

**C. SBC’s Current End-User Charge Does Not Include Costs for Implementing WLNP**

In the *Third Report and Order*, the Commission contemplated the possibility of a carrier requesting a raise to the end-user charge for LNP cost recovery and stated that any such raise should be based on a showing that the original end-user charge was not reasonable:

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<sup>22</sup> 47 U.S.C. § 251(e)(2).

<sup>23</sup> *Id.* ¶ 53.

<sup>24</sup> 47 C.F.R. § 52.33(a)(1). It is the carrier-specific costs directly related to providing LNP that are recovered by the end-user monthly charge. *See Third Report and Order* ¶ 135. Incumbent LECs also recover a number portability query-service charge that applies to carriers on whose behalf the incumbent LEC performs queries. *See id.*

<sup>25</sup> *Third Report and Order* ¶ 9. The Commission ruled that allowing incumbent LECs to recover these costs by means of a tariffed, end-user charge but allowing other carriers to recover their costs in any lawful manner met the two-part test for competitive neutrality. *See Third Report and Order* ¶ 136.

After a carrier establishes its levelized end-user charge in the tariff review process we do not anticipate that it may raise the charge during the five-year period *unless it can show that the end-user charge was not reasonable based on the information available at the time it was initially set.*<sup>26</sup>

Irrespective of whether the existing end-user charges were reasonable when tariffed, it would be unreasonable now to preclude recovery of the direct costs related to implementing WLNP, because the information supporting WLNP cost recovery was not available, and could not have been reasonably known or estimated, when the existing charges were set. As discussed in more detail below, SBC did not include the costs related to implementing inter-modal WLNP in its tariffed charge because SBC did not have sufficient information at the time to provide an accurate cost estimate. Because the Commission had not yet established the technical or procedural parameters of inter-modal WLNP, estimating such costs would have been purely speculative. Consequently, SBC's present end-user charge does not compensate SBC for the carrier-specific costs directly related to providing inter-modal WLNP. The costs recovered under the existing LNP end-user charge apply to wireline LNP alone.

At the time SBC developed its cost study and submitted its proposals to the tariff review process, SBC was unable to determine with any degree of accuracy the costs that would be incurred directly related to providing inter-modal WLNP. At that time, wireline-to-wireline LNP was much further along in development than was WLNP. Indeed, the Commission recognized early on that a great deal of work remained to be done on the technical and procedural aspects of WLNP:

A number of commenters, however, also suggest that implementation of service provider portability for broadband CMRS would necessitate more time than deployment of wireline methods. . . . It appears that while the wireline industry has already developed many of the standards and protocols necessary for wireline carriers to provide number portability, the CMRS industry is only beginning to address the additional standards and protocols specific to the provision of portability by CMRS carriers. The

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<sup>26</sup> *Third Report and Order* ¶ 144 (emphasis added).

technical requirements for broadband CMRS portability have been given comparatively little attention compared to those for wireline. . . . Moreover, cellular, broadband PCS, and covered SMR providers face technical burdens unique to the provision of seamless roaming on their networks, and standards and protocols will have to be developed to overcome these difficulties.<sup>27</sup>

It was no accident that wireline-to-wireline LNP was implemented ahead of WLNP. In addition to wireline-to-wireline LNP being more developed than WLNP, both the wireline and the wireless industries needed to address the standards, protocols, and technical aspects of integrating wireline and wireless LNP. Integration of wireline and wireless LNP could not really begin until many of the wireline-to-wireline issues were resolved.<sup>28</sup>

As part of the process of creating LNP, the Commission directed the North American Numbering Council (NANC) to make specific recommendations concerning LNP implementation.<sup>29</sup> The NANC issued its recommendations to the Commission on May 1, 1997, in a report from NANC's Local Number Portability Administration Selection Working Group (Working Group Report), which was dated April 25, 1997.<sup>30</sup> The Commission recognized that the Working Group Report was developed in large measure to address solely the wireline-to-wireline LNP process:

The Working Group Report states that the work plan executed by the Working Group and related task forces was directed primarily to the wireline portion of the industry and does not fully address wireless concerns. Specifically, the assumptions used in the preparation of the Architecture Task Force Report explicitly exclude wireless operations, and the Technical & Operational Task

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<sup>27</sup> *First Report and Order* ¶¶ 163-64.

<sup>28</sup> *Telephone Number Portability*, CC Docket No. 95-116, Second Report and Order, 12 FCC Rcd 12281 ¶¶ 91-92 (1997) (*Second Report and Order*) (“CTIA reports that it and other industry groups are currently developing technical solutions for implementing wireless number portability. We direct the NANC to monitor these industry efforts and to make recommendations to the Commission consistent with the procedures set forth in ¶¶ 128-132, *infra*, for modifications to the various technical and operational standards as necessary for CMRS providers to efficiently implement number portability and to allow CMRS providers to interconnect with a wireline number portability environment.”)

<sup>29</sup> *Id.* at ¶ 91.

<sup>30</sup> See Letter from Alan C. Hasselwander, Chairman, NANC, to Reed Hunt, Chairman, FCC, CC Docket No. 95-116, (May 1, 1997), transmitting the Working Group Report.

Force did not consider concerns of CMRS providers in depth during the development of Number Portability Administration Center Service Management System requirements. The NANC acknowledges that modifications to the Functional Requirements Specification and the Interoperable Interface Specification may be required to support number portability for CMRS providers. The NANC states that it deferred discussion of potential impacts of number portability on wireless carriers in order to ensure completion of its recommendations for wireline local number portability implementation on a timely basis to permit compliance with the Commission's deployment schedule.<sup>31</sup>

As part of its on-going role in developing the technical and operational standards for implementing WLNP, the NANC issued a series of reports to the Commission. The first of these reports was issued in 1998.<sup>32</sup> The NANC issued subsequent reports in 1999<sup>33</sup> and again in 2000.<sup>34</sup> While some of the technical and operational standards were addressed by the wireless and wireline industries and the NANC during the subsequent years, a number of important issues remained unresolved. Indeed, certain of these issues were only recently resolved by Commission orders this year.<sup>35</sup> Adoption of the necessary technical and operational standards for WLNP was delayed by various matters, including the inability to reach agreement on these contentious issues.

As can be seen from this history, it was impossible for incumbent LECs, like SBC, to know what the standards and requirements for inter-modal WLNP would be when each of its incumbent LECs submitted their cost studies to the Commission as part of the tariff review process. SBC's cost studies were submitted in 1999. Notably, much of the process of

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<sup>31</sup> *Second Report and Order* ¶ 87.

<sup>32</sup> North American Numbering Council Local Number Portability Administration Working Group Report on Wireless Wireline Integration, May 8, 1998, CC Docket No. 95-116 (filed May 18, 1998).

<sup>33</sup> North American Numbering Council Local Number Portability Administration Working Group Second Report on Wireless Wireline Integration, June 30, 1999, CC Docket No. 95-116 (filed Nov. 4, 1999).

<sup>34</sup> North American Numbering Council Local Number Portability Administration Working Group Third Report on Wireless Wireline Integration, Sept. 30, 2000, CC Docket No. 95-116 (filed Nov. 29, 2000).

<sup>35</sup> *Telephone Number Portability; Carrier Requests for Clarification of Wireless-Wireless Porting Issues*, CC Docket No. 95-116, Memorandum Opinion and Order, 18 FCC Rcd 20971 (2003); *Telephone Number Portability; CTIA Petitions for Declaratory Ruling on wireline-Wireless Porting Issues*, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 03-284 (rel. Nov. 10, 2003).

developing technical and operational standards for WLNP was still in its infancy.<sup>36</sup> Because of that, LECs were unable to include the carrier-specific costs directly related to the implementation of WLNP.<sup>37</sup> Indeed, this inability to provide a reasonable statement of its carrier-specific costs directly related to inter-modal WLNP was compounded and further delayed by the repeated extensions to the deadline for wireless carriers to provide WLNP and the holdup in resolving the thorniest issues of WLNP implementation.

Like BellSouth, SBC was unable to provide the carrier-specific costs directly related to implementing inter-modal WLNP when the initial end-user charge was tariffed. The exclusion of these costs is understandable given the uncertainties surrounding implementation of inter-modal WLNP. It is because SBC was not able to include those costs in its end-user charges back in 1999 that allowing cost recovery now is appropriate and relief should be granted.

**D. A Waiver of Commission Rule 52.33 for BellSouth and All Similarly Situated LECs is in the Public Interest**

BellSouth and, by extension, all similarly situated LECs are entitled to a waiver of Commission rule 52.33. As BellSouth demonstrated in its Petition, granting its waiver request is consistent with Congress's intent in enacting section 251, is appropriate under the Commission's own cost recovery principles, and is in the public interest.<sup>38</sup>

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<sup>36</sup> As pointed out by BellSouth, this is reflected by the fact that two of the NANC's wireless-wireline integration reports were issued after the submission dates.

<sup>37</sup> It is also unclear whether the Competitive Pricing Division of the then Common Carrier Bureau would have allowed incumbent LECs to submit tariffs with costs for WLNP. See *Long-Term Telephone Number Portability Tariff Filings of Sprint Local Telephone Companies*, CC Docket No. 99-35, Memorandum Opinion and Order, 14 FCC Rcd 2778 ¶ 4 (Com. Car. Bur. 1999) ("We find that Sprint's long-term number portability tariff raises substantial questions of lawfulness and warrants investigation of this tariff [including] whether Sprint's costs of preparing for wireless portability are unreasonable."); and *Long-Term Telephone Number Portability Tariff Filings of Sprint Local Telephone Companies*, CC Docket No. 99-35, Reconsideration of Decision to Suspend and Investigate Tariff Filings of Sprint Local Telephone Companies, 14 FCC Rcd 3828 ¶ 3 (Com. Car. Bur. 1999) ("Sprint revised its OSS worksheets to remove costs associated with billing and wireless portability functions, . . .").

<sup>38</sup> *Id.* ¶ 144. See Petition p. 9. The language of paragraph 144 of the *Third Report and Order* — "we do not anticipate that [a carrier] may raise the charge during the five-year period unless it can show that the end-user charge was not reasonable based on the information available at the time it was initially set" — does not purport to establish a new burden of proof for waiver requests. Indeed, the Commission is still obligated to give serious consideration to waiver requests under the public interest standard articulated above:

The Commission may grant a waiver of a provision of its rules on petition for “good cause . . . shown.”<sup>39</sup> Good cause is shown where “the particular facts make strict compliance [with the particular provision] inconsistent with the public interest.”<sup>40</sup> Under the facts presented here, BellSouth has met the burden of showing good cause for its waiver request. In fact, denial of this request would patently be contrary to the public interest. There are multiple reasons this is so.

*First*, the Act clearly envisions that carriers bear the costs of implementing LNP on a competitively neutral basis.<sup>41</sup> In the *Third Report and Order*, the Commission considered whether rate-of-return and price-cap LECs should be permitted to treat those costs as exogenous and ultimately ruled that the Commission would “allow but not require incumbent LECs subject to rate-of-return or price-cap regulation to recover their carrier-specific costs directly related to providing number portability through a federal charge assessed on end-users.”<sup>42</sup> Other carriers were permitted to recover their LNP costs “in any lawful manner consistent with their obligations under the Communications Act.”<sup>43</sup> Consequently, while other telecommunications carriers are free to recover their costs directly related to WLNP at any time and in any lawful manner, incumbent LECs can only recover those costs by means of a tariffed, end-user charge

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The salutary presumptions [of judicial restraint and of regularity] do not obviate the need for serious consideration of meritorious applications for waiver, and a system where regulations are maintained inflexibly without any procedure for waiver poses legal difficulties. The Commission is charged with administration in the “public interest.” That an agency may discharge its responsibilities by promulgating rules of general application which, in the overall perspective, establish the “public interest” for a broad range of situations, does not relieve it of an obligation to seek out the “public interest” in particular, individualized cases.

*WAIT Radio*, 418 F.2d at 1157.

<sup>39</sup> 47 C.F.R. § 1.3.

<sup>40</sup> *ALLTEL Corp., Petition for Waiver of Section 61.41; etc.*, CCB/CPD Nos. 01-28, 99-01, 01-36, 01-30, and 99-36, Memorandum Opinion and Order, 17 FCC Rcd 27694 ¶ 4 (2002) (*ALLTEL Waiver Order*), citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972), and *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

<sup>41</sup> 47 U.S.C. § 251(e)(2).

<sup>42</sup> *Third Report and Order* ¶¶ 124 & 135.

<sup>43</sup> *Id.* ¶ 136.

that was set before the Commission had clarified the technical and operational parameters of the intermodal porting obligation.

As discussed above, BellSouth and similarly situated incumbent LECs, like SBC, were not able to include inter-modal WLNP related costs in the present tariffed charge. But for WLNP costs to be borne on a competitively neutral basis in accordance with the statutory directive, BellSouth and other incumbent LECs, like SBC, must be given the same opportunity to recover their WLNP costs that other carriers enjoy. Making sure that all carriers bear the costs of LNP in accordance with the Congressional intent as expressed in section 251 is surely in the public interest.

*Second*, granting the waiver request and allowing BellSouth and other incumbent LECs to recover their WLNP costs is in the public interest because it allows the Commission to implement the original determination in the *Third Report and Order* — that rate-of-return/price-cap LECs be allowed to recover their carrier-specific costs directly related to providing number portability through a federal charge assessed on end-users — and the intent of section 251(e)(2) — that the costs of LNP be borne in a competitively neutral manner. BellSouth, and by extension SBC, is only seeking to recover the kinds of costs expressly allowed in and in the manner permitted by the *Third Report and Order*. Thus, this waiver request is wholly “consistent with the principles underlying the rule for which the waiver is requested,”<sup>44</sup> making the sought-after relief appropriate here.

*Third*, as demonstrated above, because the WLNP costs could not be included in the original tariffed, end-user charges, it would be inequitable and contrary to the public interest not to allow recovery of them now. In considering this waiver request, the Commission “may take into account considerations of hardship, equity, or more effective implementation of the overall policy on an individual basis.”<sup>45</sup> Certainly, where other telecommunications carriers have been

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<sup>44</sup> *BellSouth Telecommunications, Inc.’s Permanent Cost Allocation Manual Waiver of Section 32.27 of the Commission’s Rules*, ASD File No. 00-42, Order, 15 FCC Rcd 25533 ¶ 4 (2000).

<sup>45</sup> *ALLTEL Waiver Order* ¶ 4.

and continue to be free to recover these costs, it would be inequitable to bar rate-of-return/price-cap LECs from recovering them.

*Fourth*, extending the recovery period beyond the initial five-year period for the end-user charge would not violate the Commission's reasoning behind establishing that five-year period in the first place. In setting the five-year period, the Commission effectively balanced two concerns affecting the charge consumers would pay: "[a] longer period would increase the total charges consumers pay because, . . . , carriers' unrecovered capital investment will be subject to an 11.25 percent return, while a shorter period would increase the monthly charge to consumers."<sup>46</sup> As the costs directly related to the implementation of inter-modal WLNP haven't yet been included in the tariffed, end-user charge, these concerns are not implicated here.

*Fifth*, the timing of the initial end-user charge was to coincide with "when and where [end users] are reasonably able to begin receiving the direct benefits of long-term number portability."<sup>47</sup> As inter-modal WLNP has only now become available to end users, allowing SBC to recover the costs directly related to providing inter-modal WLNP at this point in time is wholly consistent with this principle. End users have not been burdened with paying for a service that was unavailable to them. Paying for it now is appropriate in light of the fact that WLNP only went into effect on November 24, 2003. Along this line, SBC notes that end users are familiar with this charge and will not be overly burdened by a short extension of it. Depending on the option selected, the rate for the end-user charge could remain the same or may actually be lower than the present rate. The following chart sets out the present rates and expiration dates for the end-user charge assessed by SBC for recovery of costs related solely to wireline LNP.

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<sup>46</sup> *Third Report and Order* ¶ 144.

<sup>47</sup> *Id.* ¶ 142.

<b>SBC LEC</b>	<b>MONTHLY RATE</b>	<b>EXPIRATION DATE</b>
Ameritech	\$0.28	January 31, 2004
Pacific	\$0.28	January 31, 2004
SWBT	\$0.33	January 31, 2004
SNET	\$.039	October 4, 2004
Nevada	\$0.41	March 31, 2005

The expiration date of the end-user charge is fast approaching (January 31, 2004) in three of SBC's regions. Therefore, SBC urges the Commission to act expeditiously in granting BellSouth's Petition and Waiver to avoid customer confusion due to a lapse in the end-user charge.

**Conclusion**

SBC supports BellSouth's Petition for Declaratory Ruling and/or Waiver. Allowing BellSouth and similarly situated incumbent LECs, including SBC, to recover their costs for implementing WLNP would be consistent with Congress's intent in drafting section 251 and in the public interest.

Respectfully submitted,  
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