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

In the Matter of	)	
	)	
Petition for Rulemaking filed by	)	
BellSouth Corporation to Change the	)	RM Docket No. 11299
Distribution Methodology for	)	
Shared Local Number Portability and	)	
Thousands-Block Number Pooling Costs	)	

COMMENTS OF COX COMMUNICATIONS, INC.

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COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. ("Cox"), in accordance with the Commission's November 21, 2005, Public Notice, submits these comments in the above-referenced proceeding.[1] For the reasons described below, Cox opposes BellSouth's Petition for Rulemaking to Change the Distribution Methodology for Shared Local Number Portability and Thousands-Block Numbering Pooling Costs (the "Petition"), but would support certain other changes to the cost recovery regime.

I. INTRODUCTION

As the Commission has recognized, Cox is one of the leading facilities-based competitive local exchange carriers ("competitive LECs"), with more than 1.5 million residential lines in service. As a user of the procedures established for both porting and pooling telephone numbers, Cox has an active interest in the effectiveness of these processes and has participated extensively in industry groups addressing issues relating to LNP and pooling since 1996. Cox maintained memberships in Northeast and West Coast regional limited liability companies prior to the

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[1] Public Notice, "Pleading Cycle Established for Comments on BellSouth Corporation's Petition for Rulemaking to Change the Distribution Methodology for Shared Local Number Portability and Thousands-Block Number Pooling Costs," RM Docket No. 11299, DA 05-3008, rel. Nov. 21, 2005.

effect of its proposal on other providers. Thus, the Petition fails to demonstrate that the proposed changes would result in fairer and more equitable procedures for all users, since it concentrates exclusively on the financial interest of BellSouth.

Cox supports continuing the current cost-sharing methodology, but suggests that the Commission consider whether to address certain concerns that, in particular, could lead to unintended benefits to non-carrier users of the NPAC and to voice over IP providers. Addressing these issues does not require the kind of wholesale change proposed by BellSouth.

II. THE PETITION MUST BE DENIED.

A. There Is No Basis to Change the Revenue-Based Assessment Process.

Cox cannot support the Petition because Cox disagrees with BellSouth's proposal that a usage-based mechanism should replace the current cost-sharing methodology. The current method is an appropriate means of allocating LNP and pooling costs among users of the system and should be retained with slight modifications. The Petition fails to furnish adequate justification for such a radical leap from one methodology to an altogether different one, particularly one that is as ill-defined as BellSouth's proposal. BellSouth's principal justification appears to be reducing the level of its contribution. The Petition fails to disclose with any degree of particularity either the types of transactions for which BellSouth's proposed fees would apply or which users would pay them either wholly or on a shared basis.[2]

Cox also would like to reduce the level of its contribution, but believes that leaping to a different methodology is the wrong solution. Indeed, the reasons that persuaded the Commission to adopt the current cost-sharing method continue to be valid. As the Commission explained when it rejected proposals for a usage-sensitive financing scheme for LNP and pooling in 1998:

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[2] For instance, BellSouth does not indicate whether it would expect that carriers would be charged for downloading updated information.

"The entire industry benefits from the maintenance of reliable regional databases for providing number portability."[3] This rationale remains true today. Further, the Commission determined that the revenue-based allocation mechanism "distributes these costs on a competitively neutral basis."[4] Nothing has happened since this determination was made that furnishes any grounds for a contrary conclusion. In short, the Commission has no reason to reconsider this earlier decision and should retain the revenue-based cost allocation methodology with minor changes.

In fact, BellSouth's petition is founded on a notion that is entirely contradicted by the *Third Report and Order,* which is that the only entities that benefit from the NPAC are the entities that port numbers or receive blocks of pooled numbers. The truth, as explained by the Commission, is that access to the information in the NPAC is essential to all service providers because it enables them to route calls accurately and promptly. Indeed, although BellSouth puts great stock in the per-port charges assessed by NeuStar, those charges subsume not just the costs of porting, but also the costs of maintaining the database that is used by every carrier to route every call wherever porting has been implemented and of downloading information to those carriers.

This fact highlights a major flaw in the Petition: BellSouth does not explain how it would be determined under the proposed methodology who causes the costs of the LNP and pooling system and what the level of their contributions would be. While BellSouth argues that a "transaction fee" should replace the current revenue-based mechanism for allocating contributions to be assessed to the various telecommunications service providers, it does not describe specifically how the system would work. This raises two significant concerns.

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[3] Telephone Number Portability, *Third Report and Order*, 13 FCC Rcd 11701, 11745 (1998) ("*Third Report and Order*").

[4] *Id.*

First, there is a serious question as to whether shifting the burden of supporting the LNP and pooling systems would unfairly disadvantage BellSouth's competitors, both new entrants and those who have been providing services only since 1996. BellSouth cavalierly dismisses that concern, alleging that "the local market is fully competitive and neither [competitive LECs] nor any other competitors need the protection…."[5] To the contrary, local markets are far from competitive at present, including those in which competitive LECs have begun to offer alternatives to the landline services of incumbents. Overburdening competitive LECs with increased fees for LNP and pooling, as BellSouth proposes, would have a negative effect on the development and spread of competition.

As evidence of full competition, the Petition first points to the growth in wireless subscribers. Given BellSouth's major role as a wireless provider, however, it is disingenuous of the Petition to rely on growth in that service to justify a need for radically changing the current cost-sharing methodology.[6] BellSouth then asserts that "[p]roviders of Internet Protocol ("IP")-based services also have established themselves in the marketplace as viable competitors to traditional landline service,"[7] citing estimates that the current number of voice over IP service customers (which is miniscule in comparison to the number of landline customers), may grow

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[5] Petition at 30.

[6] Petition at 20 & 21. Indeed, the Petition seeks to blame the dramatic rise in porting and pooling activities since 2003 on the increase in wireless customers. The Petition attempts to justify the rejection of the current cost-sharing methodology through a series of charts purporting to show that BellSouth's "billable transactions" have risen along with the total cost for supporting LNP and pooling in the Southeast region. Petition at 20-24. The thrust of BellSouth's argument is that the number of "billable transactions" has gone up dramatically over the last three years. Yet, apart from claiming that the data supporting such allegations is taken from its monthly bills from NeuStar, the Petition does not identify the transactions for which BellSouth is being billed. Presumably, they relate to porting activities inasmuch as the Petition seems to blame wireless LNP for the increase in BellSouth's "billable transactions."

[7] Petition at 12.

significantly by 2009. This projection falls far short of proving a present need to abandon the current cost-sharing methodology and adopt new transaction-based fees.[8]

Second, BellSouth's proposal provides little useful information on what transactions would be subject to the fees. Although the Petition notes that NeuStar can provide data on what each provider should pay, that does not answer the question. For instance, charges could be based on porting events, on downloads or on some combination of the two.[9]

In addition to failing to define the term "billable transaction," the Petition makes no attempt to separate LNP costs from pooling costs in either its arguments or supporting charts.[10] Accordingly, it is impossible to determine cost causation – the very theory on which the Petition claims that its proposed new mechanism is based.

Moreover, charges based on transactions either would allocate pooling costs to parties that did not cause them or create other significant public interest concerns. If pooling activities were exempted from the charges, then the providers that paid the number portability assessments would bear the full burden of paying for pooling, even though other providers benefited from it. On the other hand, assessing charges for pooling activities on carriers that engage in those activities would be a poor public policy choice. Pooling is intended to promote the efficient use of numbers, which are public assets that require conservation, and has been made mandatory by the Commission, so it makes no sense to consider a carrier that takes pooled numbers to be a

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[8] BellSouth also fails to note that this number does not necessarily reflect a conversion from incumbent LEC lines to competitors, as incumbent LECs already have begun to offer voice over IP services.

[9] The current agreement with NeuStar, as BellSouth notes, compensates NeuStar based on the number of porting events. However, this compensation covers all of NeuStar's costs, including the costs of maintaining the underlying database and notifying providers that there have been changes. These costs benefit all providers, not just those who port numbers. Moreover, there is nothing that prevents the parties from agreeing to change the basis for NeuStar's charges if doing so would be advantageous to the industry.

[10] This is significant because pooling first was implemented in many BellSouth territories in 2003, when BellSouth says that costs went up significantly. For instance, pooling went into effect in four of the eight Georgia area codes in that year.

"cost causer." In addition, if pooling transaction fees were imposed, then BellSouth and other incumbent LECs that hold the lion's share of telephone numbers currently assigned would pay little or nothing, even though they are important beneficiaries of the number conservation that has resulted from pooling. In this context, it would be grossly anticompetitive to charge competitors for new telephone assignments, while allowing incumbents to keep their current numbers at no charge.

B. Sharing Costs Based on Revenues Is Appropriate.

1. The Current Allocation Methodology Generally Works Well.

A basic principle of the 1996 Act is that all local exchange carriers are obligated to provide number portability.[11] Additionally, all telecommunications carriers are compelled by the 1996 Act to bear the costs of numbering administration with the aim of using numbers efficiently, without regard to who holds them.[12] Congress specifically directed that such cost-sharing be handled "on a competitively neutral basis."[13] Acting on these directives, the Commission fashioned the cost-sharing methodology based on the revenues of certain telecommunications service providers. As explained above, the Commission acted then for reasons that remain valid today, and Cox urges the Commission to retain the current methodology. The Petition furnishes no adequate grounds for an abrupt switch to a transaction fee regime, and the Commission thus has been provided with no reason to take such a huge leap.

The current allocation technique has been in place for several years and has worked reasonably well. It is noteworthy that the Petition does not argue that BellSouth has lost its overwhelming market dominance through the introduction of competition. An increase in its

[11] Section 251(b)(2).

[12] Section 251(e).

[13] *Id.*

LNP and pooling cost allocation can only be described as modest when compared to BellSouth's overall revenues, even as slightly diminished as a result of competition. Indeed, BellSouth's $25.4 million in costs for number portability constitute less than 14/100 of a percent of its 2004 telecommunications revenues.[14] In this context, it is frivolous for the Petition to allege that: "Escalating shared LNP and pooling costs are adversely affecting BellSouth's ability to compete effectively in the marketplace by significantly increasing its expenses."[15]

BellSouth remains the largest carrier in the Southeast, and it is entirely appropriate for BellSouth to continue to bear the largest share of the costs of supporting LNP and pooling. Another fact not mentioned in the Petition is the revenue received by BellSouth from activities relating to porting, specifically transit traffic rates derived from numbers ported to competitors who lack the facilities to connect directly to BellSouth end offices. Moreover, many incumbents, particularly rural carriers, assess porting charges against their competitors. When such revenue is taken into account, it becomes clear that LNP and pooling cost sharing is not a dead loss to the contributors. For these reasons, the current revenue model remains the fairest and most equitable means of sharing LNP and pooling costs.

Any change in the current cost-sharing framework should be undertaken with care to assure competitive neutrality, which argues against its wholesale abandonment in favor of a transaction-fee based mechanism that will likely shift the burden onto new entrants and competitors who have commenced operations only since 1996. It is critical in this regard to note that BellSouth has not addressed the fundamental basis for the Commission's adoption of a revenue-based cost-sharing methodology, which is that all carriers benefit from the operation of

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[14] Petition at 21; *see* http://bellsouth.mediaroom.com/index.php?s=press_releases&item=1632 (BellSouth fourth quarter 2004 earnings press release).

[15] Petition at 28.

the NPAC. This rationale remains valid and supports continued reliance on revenues as the appropriate cost allocation factor.

2. Transaction-based Cost Allocation Is Inappropriate Given the High Percentage of Fixed Costs Being Recovered.

Another flaw in the Petition's proposal for a transaction fee based cost-sharing methodology is the assumption that the costs of maintaining and operating the LNP and pooling systems closely follow porting and pooling activities. While it is easy to assert as a general proposition that cost causers should pay, a transaction fee mechanism would be fair only if variable costs made up the majority of the total costs. That is not the case.

Porting and pooling activities engage computer systems in which the human involvement that leads to variable costs is very limited. The creation of databases entails huge investments in fixed assets, such as computer hardware and software. Even the costs incurred in running the NPAC – troubleshooting, electricity and the like – largely are unrelated to any specific porting activity. In this environment, it is entirely reasonable to believe that the fixed costs associated with these operations constitute a significant majority of the total costs realized by the administrator in establishing and running the systems. This conclusion is reinforced by the pricing structure under the number portability contract, in which the price per port has dropped significantly over the life of the NPAC as the number of porting events has increased.[16] In such a high fixed cost environment, the revenues of the carriers who engage in porting and pooling activities represent a reasonable allocation factor for cost sharing and should be retained. Moreover, when specific porting activities do not have a significant effect on the costs, allocating costs on a per transaction basis is inappropriate, and such an approach should not be adopted.

[16] *See* Petition at n.36. This is because the fixed costs are shared among larger numbers of porting events.

III. THE COMMISSION SHOULD CONSIDER STEPS THAT WOULD ENSURE THAT ALL BENEFICIARIES OF THE NPAC CONTRIBUTE TO PAYING ITS COSTS.

As described above, there is no basis for wholesale changes in the current approach to sharing the costs of the NPAC among providers. However, the FCC should evaluate two recent developments: (1) changes in the way the NPAC is used that permit some non-carrier users to obtain access without paying any of the shared costs of the NPAC; and (2) the inability of the current system to account for the retail revenues of voice over IP providers. To the extent the Commission considers any changes in the cost allocation methodology, it should address the potential free-rider problems created by these issues.

A. The Current Cost-Sharing Model Does Not Account for Non-Carrier Users.

When the Commission adopted the initial cost recovery rules, it assumed that the only significant users of the NPAC would be carriers. At the time, that assumption was reasonable, but over the last eight years non-carrier uses of the NPAC have become more common, and these uses are likely to increase in importance as time goes on. Thus, to the extent the Commission addresses any cost recovery issues, it should consider expanding cost recovery to non-carrier users of the NPAC.

While non-carrier uses of the NPAC are not, at this time, a significant driver of the costs of the database (in large part because so many of the costs are fixed), they are growing and likely to continue to grow. In 1996, the LNP database was expected to have only a limited use: porting numbers between carriers. In 2006, it is being used for a myriad of applications, many of which do not involve telecommunications service providers. For example, the LNP databases are being used to provide data used by telemarketers to ensure that they do not call any telephone number assigned to a wireless customer. Additionally, NeuStar is actively marketing various services that involve access to the LNP databases by non-carriers or for purposes other than voice calls.[17] While it does not necessarily oppose such applications that do not interfere with the purposes for which the NPAC is intended, Cox believes that the entities that use the NPAC for these non-portability purposes should share the costs of the NPAC and provide some relief to the carriers that now support these systems. In particular, it is inappropriate for NeuStar to recover the costs of maintaining and operating the LNP systems from carriers and then receive additional revenues for providing other, non-portability services that use the NPAC without making any contribution to the NPAC costs borne by carriers. It also would be unreasonable for NeuStar to permit these new applications to impose costs on the systems that are borne solely by the carriers who contribute to cost-sharing.

This problem can be addressed by requiring additional contributions to the costs of the NPAC from entities that are not using the database directly for portability or pooling purposes. While there are many potential ways of determining what these contributions should be, they should be used in their entirety to offset the assessments made to carriers that are required to participate in number portability and pooling.[18]

B. Voice over IP Providers Should Contribute Directly to the Costs of Portability and Pooling.

Another defect in the current methodology is the failure to capture the retail revenue of LNP and pooling users, such as voice over IP providers, who obtain connectivity for their customers through incumbent and competitive LECs. The current allocation procedure captures only the wholesale revenue collected by carriers who provide the facilities for such users. Cox

[17] *See, e.g.*, http://www.neustar.biz/pressroom/files/announcements/ns_pr_102405.pdf (press release announcing SIP-X service).

[18] This does not mean that NeuStar cannot be compensated for any additional services it provides to non-carrier users. Rather, it means that every use of the NPAC for purposes other than pooling or portability should incur some

recommends that voice over IP providers and any other communications service providers that take advantage of numbering resources should be required, based on their retail revenues, to share the costs of supporting LNP and pooling.[19] This should be accomplished by requiring such users to report their revenues and participate in cost sharing in the same manner as the underlying carriers. This approach addresses one of BellSouth's complaints without making unnecessary changes in the recovery of number portability costs, and does so in a way that is equitable and consistent with the requirement that cost recovery be accomplished in a way that is competitively neutral.

IV. CONCLUSION

For all of these reasons, Cox respectfully submits that the Commission should reject the radical change advocated by BellSouth and deny the Petition. Moreover, Cox recommends that

charge that contributes to the costs of the NPAC, regardless of what compensation NeuStar receives for other services it provides.

[19] The Commission's plenary jurisdiction over numbering gives it the authority to require users of numbering resources to share the costs of making those resources available. 47 U.S.C. § 251(e)(1).

the Commission amend its rules to implement the changes to the cost-sharing methodology for LNP and pooling that are explained above.

Respectfully submitted,

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January 5, 2006

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, a legal secretary at Dow, Lohnes & Albertson, PLLC, do hereby certify that on this 5th day of January, 2006, copies of the foregoing Comments of Cox Communications, Inc. were served by hand delivery on the following:

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