

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

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

**REPLY COMMENTS OF  
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER  
ADVOCATES**

The National Association of State Utility Consumer Advocates (“NASUCA”)<sup>1</sup> respectfully submits these brief reply comments in response to the comments filed on the petition of BellSouth Corporation (“BellSouth”) requesting the Federal Communications Commission (“Commission”) to open a rulemaking to change the methodology by which the shared costs of local number portability and thousands-block number pooling are paid by carriers. Currently, the costs are paid according to the carrier’s share of intrastate, interstate and international revenues; BellSouth proposes that the costs should be recovered according to the number of transactions initiated by the carrier.

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<sup>1</sup>NASUCA is a voluntary association of 45 advocate offices in 42 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. See, e.g., Ohio Rev. Code Ch. 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205; Minn. Stat. § 8.33; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

Not surprisingly, those who support BellSouth's petition are incumbent local exchange carriers ("ILECs") that would see their costs decline under the BellSouth proposal.<sup>2</sup> On the other hand, those who oppose the proposal are carriers whose costs would increase.<sup>3</sup> In addition, the Connecticut Department of Public Utility Control ("CDPUC") opposes the petition. NASUCA finds the arguments of the opponents of the petition persuasive.

To begin, BellSouth and its supporters are merely requesting the Commission to open a proceeding because of changes in the industry that they say make the current mechanism not competitively neutral. The results of the proceeding would not be preordained. On the other hand, the opponents argue that even opening a proceeding is a waste of time, because the changes in the industry do not undercut the Commission's original determination that a revenue-based mechanism would be competitively neutral.

Verizon says that the current allocation is unfair because its allocation of costs has increased from \$6.6 million in 2002 to \$18 million in 2005, despite the fact that the number of transactions it generates has not increased.<sup>4</sup> Verizon also says that this cost is not competitively neutral, because it "places a disproportionate burden on Verizon and BellSouth (and others similarly situated) by requiring them to fund transactions when the benefits of those transactions ... increasingly flow to their competitors."<sup>5</sup> Notably absent from this analysis is any showing that Verizon's -- or BellSouth's -- **share** of the total

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<sup>2</sup> This includes AT&T Inc. ("AT&T"); National Telecommunications Cooperative Association ("NTCA"); Qwest Communications ("Qwest"); United States Telecom Association; Verizon. The one exception appears to be IDT Telecom, Inc., which raises micro issues with the calculation of revenues.

<sup>3</sup> This includes COMPTTEL; Cox Communications, Inc. ("Cox"); Integra Telecom ("Integra"); Time Warner Telecom, Inc. ("Time Warner"); T-Mobile USA, Inc. ("T-Mobile"); XO Communications Services, Inc., and Xpedius Communications, LLC (collectively, "XO/Xpedius")

<sup>4</sup> Verizon Comments at 5; see also Qwest Comments at 4.

<sup>5</sup> Id. at 8.

cost has increased... rather than the overall cost itself increasing.

On the other hand, Cox puts the issue in perspective, noting that “BellSouth’s \$25.4 million in costs for number portability constitute less than 14/100 of a percent of its 2004 telecommunications revenues.”<sup>6</sup> Thus the “burden” on BellSouth, Verizon and their cohorts is minimal.<sup>7</sup> By contrast, Integra and XO show the impact that switching to BellSouth’s proposed methodology would have on competitive local exchange carriers (“CLECs”).<sup>8</sup>

The minimal burden on ILECs compared to the substantial burden on CLECs shows the correctness of the Commission’s original determination that a revenue-based mechanism is most appropriate.<sup>9</sup> As the CDPUC states, “[a]s currently administered, recovery of those costs ensures that no carrier, technology or service industry segment has an advantage over another based on its past assignment and inventory of telephone numbers.”<sup>10</sup> Integra notes that in adopting the current mechanism,

[t]he Commission recognized that ... an incumbent LEC has a large embedded customer base ... from which other carriers would solicit and “win” customers. Therefore, competitors, not incumbents, would generate the most billable transactions. That was the case in 1998, and it is still the case today.<sup>11</sup>

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<sup>6</sup> Cox Comments at 8; see also Time Warner Comments at 7, n.4.

<sup>7</sup> Verizon cites the Commission’s standards for determining competitive neutrality in this area (Verizon Comments at 8), without acknowledging that even at its worst the current mechanism does not violate those standards.

<sup>8</sup> Integra Comments at 2; XO/Xpedius Comments at 12.

<sup>9</sup> See T-Mobile Comments at 2.

<sup>10</sup> CDPUC Comments at 3.

<sup>11</sup> Integra Comments at 3.

Indeed, whatever imbalance of transactions still exists is not a signal of unfairness to the ILECs but a sign of their continuing market dominance. As T-Mobile points out,

BellSouth's emphasis on the fact that CLECs "are no longer 'new entrants'" ... is irrelevant ... BellSouth's reliance on the recent entry of VoIP service providers ... is equally irrelevant. With respect to this particular argument, market share is the determinative factor.<sup>12</sup>

A usage-based mechanism in this context would be "founded on a notion that is entirely contradicted by the Third Report and Order, which is that the only entities that benefit from [number portability] are the entities that port numbers or receive blocks of pooled numbers."<sup>13</sup> To the contrary, "all carriers benefit from the operation of" number portability,<sup>14</sup> as do all consumers.<sup>15</sup> And all carriers and consumers benefit from number pooling.<sup>16</sup>

Further, a usage-based mechanism would "create disincentives for carriers to engage in activities that serve the public interest and unfairly penalize those who engage in such activities on a more frequent basis."<sup>17</sup> That would not be in the public interest.

Fundamentally, BellSouth and its supporters also miss the point that the law would disfavor a transactions-based funding mechanism. As noted by Time Warner, the law requires that **all** carriers contribute to the funding of local number portability.<sup>18</sup> That

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<sup>12</sup> T-Mobile Comments at 4; see also COMPTTEL Comments at 4; Time Warner Comments at 6.

<sup>13</sup> Cox Comments at 4.

<sup>14</sup> Id. at 8-9. Cox also notes that there is a question whether the costs of the database truly vary according to usage. Id. at 9; see also T-Mobile Comments at 12.

<sup>15</sup> Id. at 10-11.

<sup>16</sup> Id. at 11; see also COMPTTEL Comments at 3, Time Warner Comments at 10.

<sup>17</sup> T-Mobile Comments at 8-9; see also Time Warner Comments at 14-15.

<sup>18</sup> Id. at 3, 8, citing 47 U.S.C. § 251(e)(2). AT&T, for example acknowledges that all carriers must contribute and stresses the requirement that the contribution must be competitively neutral, while omitting the proviso that the **Commission** determines competitive neutrality. See AT&T Comments at 1.

remains true regardless of whether a carrier engages in any portability transactions at all,<sup>19</sup> much less on the level of BellSouth's or Verizon's.<sup>20</sup>

On the whole, then,

BellSouth's arguments fail to demonstrate any advantage for competition, any advantage for the public, any advantage for the administrator, or any advantage for the CLECs and other competing providers. BellSouth, and other incumbent providers like it, will be the only beneficiaries of BellSouth's proposed adoption of a usage-based methodology.<sup>21</sup>

BellSouth's supporters also fail to demonstrate any advantages for the administrator, for competitors, for competition generally, or for the public. The petition should be denied.

Respectfully submitted,

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<sup>19</sup> See NTCA Comments at 2.

<sup>20</sup> A parallel situation is found on the universal service side, where the proposed connections-based or numbers-based support mechanism will allow interstate carriers to evade contribution responsibility if they do not provide connections or numbers, despite the fact that 47 U.S.C. § 254(d) requires "[e]very carrier that provides interstate telecommunications service" to contribute.

<sup>21</sup> T-Mobile Comments at 16.