

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

In the Matter of

BellSouth Corporation

Petition for Rulemaking To Change The
Distribution Methodology For Shared Local
Number Portability And Thousands-Block
Number Pooling Costs

RM 11299

**VERIZON'S¹ REPLY COMMENTS IN SUPPORT OF CHANGING THE
DISTRIBUTION METHODOLOGY FOR SHARED LOCAL NUMBER PORTABILITY
AND THOUSANDS-BLOCK POOLING COSTS**

Numerous commenters join Verizon in supporting BellSouth's petition for a rulemaking to change the distribution methodology for the costs of database transactions in the seven regional Number Portability Administration Center (NPAC) databases.² As these commenters observe, market conditions and service providers' use of the databases have changed dramatically since the Commission first established the current cost-distribution method in the *Third Report and Order*,³ making the current scheme no longer competitively neutral. Despite

¹ The Verizon telephone companies ("Verizon") are identified in Appendix A to these comments.

² See generally Comments of the U.S. Telecom Ass'n, RM 11299 (filed Jan. 5, 2006) ("*US Telecom Comments*"); Comments of the Nat'l Telecommunications Coop. Ass'n, RM 11299 (filed Jan. 5, 2006) ("*NTCA Comments*"); IDT Telecom, Inc. Comments, RM 11299 (filed Jan. 5, 2006) ("*IDT Telecom Comments*"); Comments of AT&T Inc., RM 11299 (filed Jan. 5, 2006) ("*AT&T Comments*"); Qwest Communications Support of BellSouth Petition, RM 11299 (filed Jan. 5, 2006) ("*Qwest Comments*").

³ *Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701 (1998) ("*Third Report and Order*"). See *Verizon Comments* at 2-8; *US Telecom Comments* at 3; *NTCA Comments* at 2-3; *AT&T Comments* at 2; *Qwest Comments* at 3-4.

these changes, opponents of BellSouth's petition argue that the Commission should not even consider changing the cost-distribution method. None of the opponents' arguments, however, has any merit. The Commission should open a rulemaking proceeding to investigate a new distribution methodology based on sound cost-causation principles.

Numerous commenters agree that the Commission should change the cost-distribution methodology because the current revenue-based allocation system is no longer competitively neutral as required by statute. *See* 47 U.S.C. § 251(e)(2). As these commenters noted, the costs assessed to a particular service provider bear little or no relation to the number of transactions generated by that provider. For example, several commenters reported that their contributions under the current scheme are dramatically increasing, even though they initiate fewer and fewer database transactions.⁴ Other commenters noted that Voice over Internet Protocol (VoIP) providers generate, and benefit from, database transactions porting end users' telephone numbers to VoIP services, yet some VoIP providers do not file the FCC Form 499-A that serves as the basis for the current revenue-based methodology and therefore do not share in the transaction costs.⁵ In addition, as Verizon and other commenters noted in their opening comments, service providers are increasingly using the NPAC databases to effect their own network reconfigurations or to provide their own customers services, with the costs of those transactions shifted to other carriers based on their revenues.⁶ Indeed, even opponents of BellSouth's petition noted that the current revenue-based allocation system encourages service providers to unfairly foist these network engineering costs onto other providers and to use the NPAC databases

⁴ *See US Telecom Comments at 2-3; Qwest Comments at 3; Verizon Comments at 3-8.*

⁵ *See Time Warner Comments at 8; Cox Comments at 11-12.*

⁶ *See Verizon Comments at 7-12; T-Mobile Comments at 18-19.*

inefficiently. *See T-Mobile Comments* at 18-19. As a result of these changes in the competitive landscape and in carriers' use of the NPAC databases, the revenue-based allocation method is no longer competitively neutral.

By contrast, a cost-distribution regime based on sound cost-causation principles would encourage service providers to use the NPAC databases efficiently while also satisfying the statutory requirement of competitive neutrality. The Commission has long recognized that charging costs to the cost-causer encourages the efficient utilization of resources.⁷ Moreover, distributing costs according to sound cost-causation principles is consistent with the competitive neutrality standard embodied in section 251(e)(2). In fact, the Commission analyzed the competitive neutrality of distributing database transaction costs on a cost-causer basis in the context of the SMS/800 database used to administer toll-free telephone numbers. *See Beehive Telephone* ¶ 37.⁸ In finding the cost-causer approach competitively neutral under section 251(e)(2), the Commission explained:

[W]e believe that SMS/800 system administration costs are borne in a competitively neutral manner because, under the tariff, costs are borne only by the parties causing the costs. . . .

We do not believe that Congress, in enacting section 251(e)(2), intended to require carriers that do not use the SMS/800 system to bear the costs of administering the system. Thus, we find that recovering the administrative costs of operating the SMS/800 system only from [users] in proportion to the toll free numbering resources reserved and managed by them is competitively neutral and appropriate.

Id. ¶ 37 (footnotes omitted).

⁷ *See, e.g., Access Charge Reform*, 15 FCC Rcd 12962, ¶ 12 (2000); *Access Charge Reform*, 15 FCC Rcd 15982, ¶ 143 (2000); *MTS and WATS Market Structure*, 93 F.C.C.2d 241, at 399 (1983) (Separate statement of Commissioner Dawson, *citing* J. Bonbright, *Principles of Public Utilities Rates*, 311-312 (1961)).

⁸ *Beehive Telephone Company Petition for Declaratory Ruling*, 15 FCC Rcd 11939, ¶¶ 36-37 (2000) ("*Beehive Telephone*").

Opponents of BellSouth's petition nevertheless argue that the Commission should not even consider changing the current cost distribution method. *First*, opponents argue that shifting to a new distribution scheme based on cost-causation principles cannot be competitively neutral because it would likely decrease incumbent LECs' costs and increase competitive LECs' costs.⁹ Competitive neutrality, however, means that cost allocations must not affect the ability of providers to earn a normal return and that no service provider may have an appreciable incremental cost advantage over another service provider when competing for a subscriber. *Third Report and Order* ¶¶ 42, 53. Competitive neutrality is not a guarantee to competitive LECs that their costs must be absorbed by incumbent LECs.

Second, opponents argue that no change is warranted because the *Third Report and Order* anticipated that incumbent LECs would pay a disparate proportion of the transaction costs under a revenue-based scheme but nevertheless found such a scheme to be competitively neutral.¹⁰ These opponents overstate the conclusions of the *Third Report and Order* and the database uses anticipated by it. Nothing in the *Third Report and Order* suggests that the Commission foresaw that some service providers would drive up the total transaction costs to be distributed among carriers by generating hundreds of thousands of database transactions to reconfigure their own networks – transactions that do not advance either local number portability or thousands block pooling. And to the extent that the Commission did anticipate that service providers would request some additional “discretionary” database services “not necessary for the provision of number portability” or pooling, it anticipated that those costs would be treated charged directly to the cost causers – not treated as “shared costs” and allocated among providers. *See Third*

⁹ See *XO Comments* at 11-12.

¹⁰ See *Integra Comments* at 4.

Report and Order ¶¶ 37, 62, 72, 92.¹¹ Nor did the *Third Report and Order* hold that usage-based charges violated competitive neutrality. Rather, it merely concluded in 1998 that it was “prudent at this early stage in the deployment of number portability” to adopt a revenue-based approach. *Third Report and Order* ¶ 88. Number portability and pooling are no longer in their “early stages.” It is appropriate for the Commission to reexamine the cost distribution method.

Third, opponents argue that the Commission should deny BellSouth’s petition because cost-causation principles cannot be applied to many of the database transactions at issue, or because cost-causer principles point to end users, rather than service providers.¹² These issues, however, are precisely the types of questions that the Commission should investigate in a rulemaking proceeding. As Verizon noted in its opening comments, applying cost-causation principles means that the Commission must first consider the various reasons why service providers may initiate transactions in the NPAC databases and how they benefit from those transactions. Understanding the reasons behind, and the benefits received from, these transactions will shed light on how to appropriately distribute transaction costs consistent with cost-causation principles. Applying these principles, the Commission may find that there are some types of transactions for which there is no single “cost-causer,” such that the costs cannot be distributed directly to the cost-causer.

In other transactions, however, there may be a clear beneficiary, or cost-causer, that should bear the costs of the transaction. For example, as Verizon and T-Mobile observed in their opening comments, service providers are increasingly using the database to accomplish their own network upgrades and reorganizations, through intra-service provider transactions and

¹¹ See also *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, ¶¶ 202-03, 211 (2000); *T-Mobile Comments* at 18-19.

¹² See *Cox Comments* at 4; *T-Mobile Comments* at 15.

modifications. *See Verizon Comments* at 7-12; *T-Mobile* at 18-19. In the case of such transactions, there can be little doubt as to the identity of the cost-causer of the transaction. The Commission should open a rulemaking to examine these and other questions as to how cost causation principles apply to the distribution of NPAC transaction costs.

Opponents of BellSouth's petition argue in the alternative that if the Commission concludes that a reexamination of the cost distribution method is warranted – and it is – the Commission should issue a Notice of Inquiry rather than a Notice of Proposed Rulemaking. *See Comptel Comments* at 4-5; *Integra Comments* at 4. Contrary to these commenters' assertions, opening a rulemaking does not represent a “rush to judgment” regarding any particular cost distribution methodology. *See Comptel Comments* at 5. Nor does a rulemaking restrict the Commission's ability to solicit and consider a variety of proposals and comments, including proposals and comments of parties who are not currently contributing to the transaction costs of the NPAC databases. *See Integra Comments* at 4. Opponents have not explained how they believe a rulemaking would restrict the Commission's ability to seek input from a wide range of parties or the Commission's decision making – nor could they. A rulemaking provides the Commission the flexibility to obtain the comments and insight of service providers throughout the telecommunications industry and to invite commenters to propose possible alternatives to BellSouth's usage-based methodology, while also ensuring that the Commission can take regulatory action if it concludes from its analysis that such action is warranted. Although Verizon agrees that the Commission should conduct a careful examination of the current cost-distribution method and the effect and feasibility of alternative cost-distribution methods, that careful examination can be – and should be – conducted within a rulemaking proceeding as proposed by BellSouth.

CONCLUSION

For the foregoing reasons, as well as the reasons discussed in Verizon's comments, the Commission should grant BellSouth's petition and open a rulemaking to change the current method for distributing the cost of transactions in the NPAC databases

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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies participating in this filing are the local exchange carriers affiliated with Verizon Communications Inc.:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Southwest Incorporated d/b/a Verizon Southwest
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.