

**BEFORE
THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
BellSouth Corporation)	RM-11299
)	
Petition for Rulemaking To Change The)	
Distribution Methodology for Shared)	
Local Number Portability and Thousands-)	
Block Number Pooling Costs)	

REPLY COMMENTS OF LEVEL 3 COMMUNICATIONS IN OPPOSITION

I. INTRODUCTION

Level 3 Communications submits these reply comments in opposition to BellSouth's Petition for Rulemaking to Change the Distribution Methodology for Shared Local Number Portability and Thousands-Block Number Pooling Costs ("Petition"). As the weight of the Initial Comments reflects, BellSouth's Petition is nothing but an attempt to shift to its competitors the costs that BellSouth incurs for correctly routing calls for its customers in its region. Moreover, BellSouth fails to offers any details of or justification for the change.

BellSouth's Petition is a solution in search of a problem and is deficient in many respects. First, the petition does not comply with Commission rules requiring BellSouth to set out "the text or substance of the proposed rule, amendment or rule to be repealed." In its 34-page filing, BellSouth does neither. Nor does the Petition identify any justifiable reason to change the existing system, other than that BellSouth does not want to pay its fair share to support the appropriate numbering databases. Instead, the petition is designed to shift costs to competitors. For example, BellSouth suggests that through its

definition of a billable transaction that new entrants will be charged a per number fee for every 1,000 or 10,000 number block it receives. This is a departure from today's market where new entrants receive numbers without cost. This anticompetitive "tax" on new entrants will be discussed in greater length below.

Finally, BellSouth's petition is deficient because it does not comply with the statutory obligation that fees for Local Number Portability ("LNP") management be recovered from telecommunication carriers on a competitively neutral manner. BellSouth seeks to include VoIP providers in the mix of telecommunications carriers who must contribute. First, Level 3 is not aware of any statutory or commission definition that classifies VoIP providers as telecommunications providers.¹ Second, because VoIP providers rely upon local exchange carriers to provide network interconnection for call routing and LNP functionality, these carriers address the costs of managing completion of those calls.

Level 3 urges the Commission to reject BellSouth's attempt to shift its costs to its competitors. In the event that the Commission believes that issues exist that merit further consideration, Level 3 urges the Commission to start with a Notice of Inquiry. That will allow the Commission to fully understand the issues and how the existing marketplace works. Only through that a judicious review can the Commission adopt, if necessary, targeted reforms that will further competition and allow the Commission to meet its statutory requirements. As COMPTTEL correctly argued, "The devil is in the details".

As such, BellSouth's undefined proposal must be rejected.

¹ Level 3 believes that to date the FCC has only granted one waiver to a VOIP provider to obtain numbers directly from the numbering administrator.

II. BELLSOUTH'S PETITION FAILS TO COMPLY WITH THE COMMISSION'S RULES AND ITS STATUTORY REQUIREMENTS

Level 3 agrees with COMPTTEL that BellSouth's petition should be dismissed for failing to comply with § 1.401(c) of the Commission's rules. *See* 47 CFR § 51.401. The rules require that a petition "shall set forth the text or substance of the proposed rule, amendment or rule to be repealed". Nowhere in its 34-page petition does BellSouth do either.²

Although BellSouth provides few details about its proposal, it appears that the proposal is principally designed to grant themselves financial relief while putting competitive carriers at a disadvantage. As Level 3 understands BellSouth's proposed recovery mechanism, each carrier would pay \$1.05 cents for every billable transaction. Those transactions would include the initial download of telephone numbers a carrier receives when they enter the market or when they seek additional numbering resources. Under the BellSouth plan, a carrier receiving a 1000 block of numbers would pay \$1,050 for that block. Today, new entrants do not pay anything for numbers when they enter the market or when they expand their numbering resources. Implementing BellSouth's plan will make it more expensive for new entrants to compete against BellSouth. The reality is that BellSouth probably has in its inventory more numbers than it needs and will never be forced to pay for new numbering resources.

Such an outcome is not competitively neutral and is the sort of result the Commission has previously rejected.³ BellSouth seems to have reached a recovery mechanism of \$1.05 by taking the total budget for NPAC in the Southeastern Region and

² COMPTTEL Statement in Opposition at 2.

³ *See In re Number Portability*, Third Report and Order, 13 FCC Rcd 11701 ¶ 53 (1998) ("LNP Third R & O"); *In re Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574 ¶ 199 (2000) ("Pooling First Order")

dividing by the number of billable transactions. As Cox points out, this methodology is flawed. A transaction based cost allocation method is inappropriate given the high percentage of fixed costs being recovered by NANC.⁴

Level 3 also agrees with Time Warner that BellSouth's proposal does not meet the statutory requirement of 47 U.S.C. 251(e)(2), which requires that LNP costs be recovered from "all telecommunications carriers on a competitively neutral basis".⁵ BellSouth's proposal violates competitive neutrality by imposing a competitive disadvantage on entities that perform a large number of uploads. Any step that penalizes carriers for uploads will hurt the industry by making it more difficult to complete calls. BellSouth's proposal also violates the requirement for competitive neutrality by exempting carriers that do not do uploads. Lastly, the BellSouth plan would require VoIP providers, who have not been classified as telecommunications carriers, to contribute in violation of the statute. BellSouth's proposal seems unnecessary since in today's environment, VoIP providers purchase telecommunication services, including number portability, from local exchange carriers who are paying the appropriate LNP fees.

III. BELLSOUTH HAS NOT DEMONSTRATED THE NEED FOR CHANGE IN THE RULES

Level 3 agrees that BellSouth has failed to demonstrate a need to change the rules. It is disingenuous for BellSouth to argue that it receives no benefit from supporting the LNP database when it owns the largest incumbent provider in the Southeastern Region and 40 percent of one of the largest wireless providers in the country. As Neustar states, virtually every call that terminates within North America relies upon NPAC to be routed

⁴ Comments of Cox Communications, Inc. at 9.

⁵ Opposition of Time Warner Telecom at 2.

to completion.⁶ COMPTTEL correctly points out that “[w]ithout an accurate database, telephone calls cannot be routed to the intended party, a malfunction would adversely affect the operation of the public switched telephone network as a whole and reflect poorly on both the carrier serving the called party and the carrier serving the calling party.”⁷ There is no doubt that BellSouth derives a benefit from NPAC.

In arguing for a transaction sensitive funding mechanism, BellSouth fails to provide any justification that would outweighs the Commission’s findings in 1998 that “[t]he entire industry benefits from the maintenance of reliable regional databases for providing number portability”⁸. Neustar charges cover not just the costs of porting, but also of maintaining the databases used by every carrier to route every call wherever porting has been implemented and of downloading information for those carriers.⁹ Before even considering a per transaction fee, the Commission must require BellSouth to show cost causation.¹⁰

IV. IF THE COMMISSION MOVES FORWARD, IT SHOULD DO SO VIA A NOTICE OF INQUIRY

Level 3 agrees further that BellSouth’s proposal is so deficient that the Commission must reject BellSouth’s request for a rulemaking. The potential for disruption to the fabric of the industry’s call completion machinery far outweighs the benefits gained from BellSouth’s attempt to shift its business costs to its competitors. As Cox correctly argues, since ILECs hold the majority of numbers, transitioning to a

⁶ See <http://www.neustar.com/interoperability/lnp.cfm>

⁷ COMPTTEL at 3.

⁸ Cox at 4.

⁹ Id.

¹⁰ Id at 6.

transaction based fee will reduce ILEC contributions to almost nothing.¹¹ That result in itself drives BellSouth's proposal outside the requirements of 47 U.S.C. 251(e)(2).

While Level 3 also believes that the current system works fine, Level 3 would urge the Commission to follow the guidance of COMPTTEL and other commentors and pursue a Notice of Inquiry if the Commission believes further investigation is required. Only through a thorough, judicious review can the Commission determine whether a change is needed, how various proposals would impact the industry and settle on the appropriate course of action.

V. CONCLUSION

For all these reasons, Level 3 submits that the Commission should reject the Bell-South Petition.

Respectfully submitted,

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¹¹ Id.