

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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

REPLY COMMENTS OF TIME WARNER TELECOM

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Time Warner Telecom, Inc. (“Time Warner”), by its attorneys, hereby submits these reply comments in response to the BellSouth’s Petition for Rulemaking (“BellSouth Petition”) to change the methodology for recovering the shared industry costs of local number portability (“LNP”) and thousands-block number pooling administration (“pooling”).

I. DISCUSSION

In its Petition, BellSouth argued that the Commission should initiate a rulemaking proceeding for the purpose of replacing the existing revenues-based methodology for recovering shared LNP and pooling costs with a system in which shared costs would be recovered through database upload charges. For the reasons TWTC described in its opposition to the BellSouth Petition, the recovery of shared LNP and pooling costs through upload charges would be inconsistent with the requirement in Section 251(e)(2) that LNP and pooling costs be recovered from all telecommunications carriers on a competitively neutral basis. TWTC Comments at 3-9. As TWTC also explained, an upload charge methodology would not even meet BellSouth’s own litmus test (which is not found in the statute) that costs

should be recovered from those carriers that benefit from LNP and pooling. *See id.* at 9-15. Moreover, given that the parties supporting BellSouth's petition generally reiterated arguments made by BellSouth in its petition, no reply to these filings is required. Nevertheless, the commenting parties raised several discrete issues that warrant further discussion, and TWTC therefore files these reply comments to address those issues.

First, Verizon argues that the Commission's decision in the *Beehive Telephone*¹ decision supports the conclusion that a usage-based cost allocator that adheres strictly to the principle of cost causation is competitively neutral. Verizon at 10. There is no basis in the *Beehive Telephone* decision or the Commission's decisions interpreting Section 251(e)(2) for reaching this conclusion.

Section 251(e)(2) states that the Commission shall ensure that the costs of LNP and pooling are recovered from all telecommunications carriers on a competitively neutral basis. 47 U.S.C. § 251(e)(2). The Commission has interpreted the Section 251(e)(2) competitive neutrality requirement to mean that cost recovery must not significantly affect any carrier's ability to compete with other carriers.² Accordingly, the Commission determined that its cost allocator (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.³ The

¹ *In re Toll Free Service Access Codes, et al.*, Fifth Report and Order, 15 FCC Rcd 11939 (2000) ("*Beehive Telephone*").

² *In re Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 ¶ 131 (1996) ("*First LNP Order*").

³ *In re Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701 ¶ 53 (1998) ("*Third LNP Order*").

Commission also held that it must depart from its policy preference for cost causative charges where necessary to ensure competitive neutrality:

Congress has directed that we depart from cost causation principles if necessary in order to adopt a ‘competitively neutral’ standard, because number portability is a network function that is required for a carrier to compete with the carrier that is already serving a customer... We emphasize, however, that this statutory mandate constitutes a rare exception to the general principle, long recognized by the Commission, that the cost causer should pay for the costs that he or she incurs.

First LNP Order ¶ 131 (emphasis added). The Commission determined that an end-user revenues-based cost allocator for LNP and pooling is competitively neutral without regard to whether it is cost-causative.

Verizon argues that the shared LNP/pooling costs should be recovered in a cost causative manner and that the Commission’s decision in the *Beehive Telephone* case supports the conclusion that a “per transaction” cost-causative recovery mechanism is competitively neutral. Verizon Comments at 10-11. But the Commission did not even address per transaction charges in *Beehive Telephone*. As it explained, “[u]nder the terms of the SMS/800 Tariff, [the Responsible Organizations that manage toll-free numbers (‘]RespOrgs[’)] pay monthly charges for each number they reserve or manage.” *Beehive Telephone* ¶ 3. *See also id.* ¶ 36. The Commission found that such monthly per-number charges are a competitively neutral means of recovering the 800 database costs. This is hardly surprising since the proportion of numbers reserved or managed by a carrier is, like revenues, a measure of a carrier’s market share. As the Commission has concluded, the allocation of shared LNP/pooling costs in proportion to market share as measured by telephone number usage is competitively neutral: “[A]llocating currently available number portability costs based on active telephone numbers results in approximately equal per-customer costs to each carrier. We also believe that assessing costs on a per-telephone

number basis should give no carrier an advantage, relative to its competitors.” *First LNP Order* ¶ 135. The fact that the Commission has chosen different competitively neutral measures of market share as the basis for recovering different shared number portability costs in no way supports Verizon’s assertion that a transaction-based charge (such as an upload-based charge) or some narrowly defined cost causation charge is consistent with Section 251(e)(2).⁴

Nor is it significant that only RespOrgs that use the SMS/800 database contribute to the shared costs of the SMS/800 databases. RespOrgs compete exclusively with one another for 8xx customers and the SMS/800 databases contain information and enable functions that affect only the competitive position of RespOrgs. Accordingly, recovery of SMS/800 costs from RespOrgs based on a measure of market share within the market for 8xx calling services meets the Section 251(e)(2) standard. Indeed, limiting the scope of recovery to RespOrgs in this manner resembles the Commission’s decision to limit the recovery of shared regional LNP/pooling costs from all carriers in a region based on a measure of market share within the region. It is also worth pointing out that the costs associated with the aspects of toll free numbering administration performed by NANPA, such as the assignment and activation of toll free area codes (i.e. 800, 888, 877), are recovered from all telecommunications carriers based using the revenues-based allocator. *Id.* ¶ 37.

⁴ Even if a narrow definition of cost causation were the standard, the Commission has stated that “[i]n the case of thousands-block number pooling, it is not clear who is the ‘cost causer.’ ... [T]housands-block number pooling is simply an enhancement to the previous numbering administration plan that facilitates more efficient coordination among all carriers, and thus there is no ‘cost causer’ in the traditional sense.” *In re Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability*, Third Report and Order, Second Order on Reconsideration, 17 FCC Rcd 252 ¶ 36 (2001).

While the foregoing discussion and the comments filed in this proceeding should put to rest any question regarding the need for a rulemaking to fundamentally reassess the manner in which shared LNP/pooling costs are recovered, several parties have raised the question of whether changes in the use of the shared databases warrants a more narrowly targeted rulemaking proceeding. For example, although TWTC explained that carriers' upload transactions are, as a whole, not discretionary (*see* TWTC Comments at 14), several parties asserted that some carriers and non-carriers have used the shared industry databases for discretionary functions unrelated to LNP or pooling. For example, Verizon and T-Mobile state that some carriers have engaged in database uploads for the purpose of porting numbers between two switches owned by the same carrier. *See* Verizon Comments at 5-8; T-Mobile at 18-19. These parties assert that porting numbers between switches owned or controlled by the same carrier is prompted by the need to move numbers to a new switch, to even out the load among a carrier's switches or to provide location portability. *See* T-Mobile Comments at 18; Verizon Comments at 6. Verizon also states that some carriers upload information to the shared databases for the purpose of modifying the routing of calls or changing the SS7 routing information for supplementary services such as CLASS, line information database, and so on. *See* Verizon Comments at 7. In light of these activities, Verizon and T-Mobile both suggest that the Commission explore treating costs associated with uploads in these cases as direct carrier-specific costs. *See* Verizon Comments at 11; T-Mobile Comments at 18.

The Commission should assess these suggestions by determining the extent to which the carriers are in fact engaging in *discretionary* upload activity. TWTC's experience is that it has no choice but to perform uploads associated with intracompany porting that might upon

first review appear to be discretionary. For example, TWTC introduces new IP-based switches to serve rate centers already served by its legacy circuit switches. Under the Commission's number optimization rules, TWTC may not obtain a new block of numbers for a new IP switch if TWTC has not met the necessary utilization threshold for the block of numbers assigned to TWTC's legacy switch serving the same geographic area. *See* 47 C.F.R. § 52.15. While this rule is an appropriate restraint on number usage, it leaves TWTC no choice but to port numbers from its legacy switch to its new IP switch. Such intracompany porting is therefore non-discretionary, and it advances the Commission's number optimization policy goals. Accordingly, the costs incurred by the database administrator to process the uploads and downloads associated with such intracompany porting should be recovered in the same manner as other LNP/pooling shared industry costs. Moreover, if the vast majority of intracompany porting is similarly non-discretionary and advances the policy goals of number optimization and LNP, no revisions to the cost recovery rules are needed. On the other hand, if carriers are in fact engaging in substantial discretionary upload activity, it would be appropriate to initiate a rulemaking proceeding for the narrow purpose of considering whether carriers should be permitted to use the shared databases for such discretionary purposes and, if they should be, the manner in which they should pay for database access.

Finally, Cox points out that Neustar is actively marketing the use of shared databases by non-carriers for functions unrelated to LNP and pooling. Cox Comments at 10-11. Cox correctly points out that, if allowed to benefit from the shared databases by purchasing access to or by purchasing services that utilize the databases, such non-carrier users should be required to contribute to the shared database costs. *Id.* It would be appropriate for the

Commission to conduct a review, in a rulemaking proceeding if necessary, of the non-LNP/pooling services that Neustar seeks to provide to determine whether, how and at what price such services should be offered.

II. CONCLUSION

For the reasons described herein, the Commission should deny BellSouth's Petition for Rulemaking except to the extent described herein.

Respectfully submitted,

/s/

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