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

Verizon's Petition for Waiver of the Commission's Rules to Treat Unrecovered Local Number Portability Costs as Exogenous Costs Under Section 61.45(d)	))))))	CC Docket No. 95-116

REPLY COMMENTS OF VERIZON

As Verizon explained in its Petition,[1] Verizon, just like AT&T, has experienced a significant shortfall in its recovery of its estimated costs for implementing Local Number Portability ("LNP"). This shortfall was the result of an unexpectedly large decline in the number of access lines that the company served over the five-year recovery period set by the Commission for LNP expenses, which meant that Verizon was able to recover its per line LNP recovery fee from fewer lines overall than it initially anticipated. As the Commission has now recognized in granting AT&T's similar petition, these costs were incurred pursuant to a government mandate and have not been recovered elsewhere, and thus qualify for exogenous treatment.[2] And, as the Commission further observed when it granted the AT&T Petition, recovery of these costs will serve the public interest, good cause exists for granting a waiver of the Commission's rules,[3] and allowing exogenous

[1] *See* Petition for Waiver of the Commission's Rules to Treat Unrecovered Local Number Portability Costs as Exogenous Costs Under Section 61.45(d), CC Docket No. 95-116 (June 30, 2006) ("Verizon Petition").

[2] *See* Petition of AT&T for Waiver of the Commission's Rules to Treat Certain Local Number Portability Costs as Exogenous Costs Under Section 61.45(d), Order, CC Docket No. 95-116, FCC 06-97, ¶¶ 13-15 (rel. Jul. 10, 2006) ("AT&T Order").

[3] *Id.* ¶ 16.

cost recovery through the End User Common Line Charge ("EUCL") is the appropriate mechanism under these circumstances.[4] For the reasons set forth in Verizon's Petition and in the AT&T Order, the FCC should now grant Verizon's Petition.

The sole commenter in response to Verizon's Petition was the New Jersey Division of the Rate Counsel ("NJRC").[5] The NJRC Comments consist primarily of a rehash of arguments made in response to AT&T's petition that the Commission rejected in the AT&T Order. Specifically, the Commission: (i) rejected the argument that an abbreviated comment cycle violates due process;[6] (ii) rejected the claim that the costs at issue do not qualify as exogenous costs;[7] (iii) rejected the argument that even if these costs do qualify as exogenous costs, they should not be recovered through the EUCL;[8] (iv) found no merit in the contention that allowing recovery here amounts to retroactive

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[4] *Id.* ¶ 11.

[5] *See* Comments of the New Jersey Division of the Rate Counsel, CC Docket No. 95-116 (July 19, 2006) ("NJRC Comments").

[6] NJRC Comments at 2-3 & n.6; AT&T Order, ¶ 19. The comment cycle in this proceeding is actually longer than the cycle the Commission used in response to the AT&T Petition. There, the Commission gave seven days from the date of public notice to file opening comments and four days after the comment date to file replies. Here, counting from the date of the first public notice, the Commission has given parties 10 days to file opening comments and four days to file replies. In both cases, the period for reply comments encompassed a weekend. Moreover, as Verizon's Petition and the NJRC Comments show, the substantive issues in this matter are the same as those considered in the AT&T Order, meaning that parties have had more than ample opportunity to make their views on these matters known to the Commission.

[7] NJRC Comments at 4-6; AT&T Order, ¶¶ 13-15 (finding that, contrary to the NJRC's arguments, these costs "are proper costs that have not been recovered elsewhere and thus qualify for exogenous treatment").

[8] NJRC Comments at 6; AT&T Order, ¶ 11 (finding that the EUCL is "the appropriate mechanism for recovery if exogenous treatment is allowed").

ratemaking;[9] (v) rejected the argument that the relief is barred by the statute of limitations in Section 415;[10] and (vi) found that good cause exists for a waiver.[11]

NJRC makes a few additional arguments, but these are equally meritless. First, NJRC claims, without any support, that as a result of the AT&T/SBC and Verizon/MCI mergers "there is simply no need for competitive neutrality at this time,"[12] and that "subsequent events" mean that the Commission should now require recovery from interstate access charges rather than end users.[13] To the contrary, competitive neutrality is mandated by statute,[14] and the Commission held in the AT&T Order that "whether a cost recovery mechanism is competitively neutral is a threshold question for any proposed recovery of LNP costs."[15] NJRC also provides no grounds for reversing course and requiring LNP costs to be recovered from interstate access charges, rather than from

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[9] NJRC Comments at 9-10; AT&T Order, ¶ 18 (finding that "[t]he benefits of LNP are long term benefits, which have accrued to and will continue to accrue to all telecommunications customers – past, present and future").

[10] NJRC Comments at 10; AT&T Order, ¶ 17 (noting that the statute of limitations in Section 415 applies to "'suit[s] instituted by a carrier in a district court of the United States to recover charges due from a customer subscribing to its service,'" and thus does not apply to a petition seeking exogenous treatment of LNP costs (quotation omitted)).

[11] NJRC Comments at 11; AT&T Order, ¶ 16 (finding that the "public interest will be served by permitting AT&T to recover these approved costs over a brief period in a manner that is competitively neutral and results in reasonable charges").

[12] NJRC Comments at 5.

[13] *Id.* at 6. These "subsequent events" include mergers between IXCs and ILECs, the separations freeze, the reclassification of VoIP as an interstate service, and the classification of DSL as an information service.

[14] 47 U.S.C. § 251(e)(2) (providing that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission"). Given that the Commission has granted AT&T exogenous cost treatment, the statutory need for competitive neutrality suggests an additional basis for granting Verizon's Petition.

[15] AT&T Order, ¶ 10.

end users. None of the "subsequent events" referred to by NJRC alter the FCC's fundamental conclusion in the *Third Report and Order* that recovery from access charges would be inappropriate because "number portability is not an access-related service and IXCs will incur their own costs for the querying of long-distance calls;"[16] indeed, NJRC does nothing to explain the relevance of any of these "subsequent events" to the issue of LNP cost recovery.

Second, the NJRC Comments contend that Verizon made Form 477 filings throughout the five-year period that show it knew access lines were declining, and that Verizon thus should not have waited to seek relief.[17] While Verizon did realize during the recovery period that access lines were declining (and had forecasted a modest decline in access lines at the outset of the recovery period), the company had no way of knowing how large the total decline would be until after the recovery period. Moreover, the Commission made clear that requests for adjustments during the recovery period would be looked upon with disfavor.[18]

Third, the NJRC argues that the Petition lacks sufficient data, such as state-by-state allocation data or a broader analysis of all of its other exogenous costs. The Commission declined to credit a similar objection raised by the California Public Utilities Commission in its comments on the AT&T Petition.[19] As the FCC noted in the AT&T Order, the "precise amount of LNP costs in fact recovered," the "precise line counts over

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[16] Telephone Number Portability, *Third Report and Order*, 13 FCC Rcd 11701, ¶ 135 (1998) ("*Third Report and Order*").

[17] NJRC Comments at 5.

[18] *Third Report and Order*, ¶ 144.

[19] *See* Comments of the California Public Utilities Commission, CC Docket No. 95-116, at 5 (Apr. 7, 2006).

the recovery period," and "the amount of unrecovered implementation costs" all must be set out in tariff filings;[20] this level of detail is neither necessary nor appropriate for inclusion in a waiver petition, and was not required in the AT&T proceeding. Indeed, NJRC offers no grounds for including a state-by-state analysis of the data, or for altering the size of the recovery amount on a state-by-state basis. As Verizon noted in its Petition, if exogenous cost treatment of these costs is permitted, in order to avoid passing costs through to carriers, Verizon will adjust its recovery in those jurisdictions where there is no additional room under the EUCL cap.[21] Unlike a state-by-state approach, which could force individual regions to adopt recovery amounts that would be higher than the EUCL cap, Verizon's proposed structure would result in expeditious recovery of LNP costs without exceeding the EUCL cap in any jurisdiction.[22]

Finally, NJRC argues that Verizon's LNP underrecovery should be offset by any cost reductions flowing from the waivers that the Commission has granted to allow the company to keep its advanced services outside the price cap model pending a determination of how those services should be regulated under Title II.[23] However, as Verizon has already explained in response to NJRC's application for review of the Bureau's most recent VADI waiver grant, it is entirely appropriate for VADI costs to

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[20] AT&T Order, ¶ 16 n.74.

[21] Verizon Petition at 15-16.

[22] Verizon respectfully reiterates its request that the Commission make clear that in recovering LNP costs through adjustments to its EUCL charges, the company need not impose a uniform adjustment across every jurisdiction. Notably, no objections to this point have been raised.

[23] NJRC Comments at 8 (citing NJRC's Application for Review of the Bureau's decision in Petition for Waiver of the Commission's Price Cap Rules for Services Transferred from VADI to the Verizon Telephone Companies, WCB/Pricing File No. 06-10, DA 06-1238 (Wireline Comp. Bur., rel. Jun. 8, 2006)).

remain outside the price cap regime.[24] The NJRC Comments are simply a transparent attempt to pre-determine the issues in the Application for Review and establish a back-door means of bringing these costs into the price cap model. In any event, the FCC has already rejected, in the AT&T Order, the argument that LNP underrecovery amounts have to be weighed against the overall rates calculated under the price cap on the ground that the LNP recovery charge was a "unique procedure" that was "separate from the price cap process."[25]

Conclusion

For the foregoing reasons, as well as for the reasons articulated in the AT&T Order and in Verizon's Petition, the Commission should grant Verizon's Petition.

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[24] *See* Petition for Waiver of the Commission's Price Cap Rules for Services Transferred from VADI to the Verizon Telephone Companies, Opposition of Verizon, WCB/Pricing File No. 06-10 (July 21, 2006).

[25] AT&T Order, ¶ 16 n.78.

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