

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

In the Matter of)	
)	
Petition of Verizon and Verizon Wireless)	WC Docket No. 11-95
For Declaratory Ruling to Assess)	
NPAC Database Intra-Provider Transaction)	
Costs on the Requesting Provider)	

**REPLY COMMENTS OF
THE NEW JERSEY DIVISION OF RATE COUNSEL**

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SUMMARY

The New Jersey Division of Rate Counsel recommends that the Federal Communications Commission reject the petition filed on May 20, 2011 by Verizon Communications, Inc. and Verizon Wireless for a declaratory ruling requesting that the costs of certain tasks that use the Number Portability Administration Center database be borne by the purported cost-causing providers. The Petition is procedurally deficient and based on flawed reasoning regarding cost causation, and, therefore, should be denied.

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I. INTRODUCTION

The New Jersey Division of Rate Counsel (“Rate Counsel”)¹ hereby replies to the comments submitted to the Federal Communications Commission (“FCC” or “Commission”) regarding the Petition of Verizon and Verizon Wireless for Declaratory Ruling to Assess NPAC Database Intra-Provider Transaction Costs on the Requesting Party (“Verizon Petition” or “Verizon’s Petition” or “Petition”), which Verizon and Verizon Wireless (“Verizon”) filed with the FCC on May 20, 2011.²

¹ / Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. The Rate Counsel, formerly known as the New Jersey Ratepayer Advocate, is in, but not of, the Department of Treasury. *N.J.S.A.* §§ 52:27EE-46 *et seq.* Rate Counsel did not submit initial comments. Rate Counsel reviewed but does not disclose the confidential information in Verizon’s Petition.

² / The following companies submitted initial comments in this proceeding: AT&T Inc. (“AT&T”), CenturyLink, Comcast Corporation (“Comcast”), COMPEL, Level 3 Communications, LLC (“Level 3”), Sprint

Comments differ as to the merits of Verizon's Petition. For example, as these reply comments demonstrate, some incumbent local exchange carriers ("ILEC") support the FCC's review of the cost recovery mechanism through a more general proceeding, but differ as to whether the FCC should approve Verizon's Petition pending such a proceeding.

II. BACKGROUND

A. Number Portability Administration Center

The Number Portability Administration Center ("NPAC") database supports carriers' provision of local number portability ("LNP") and their implementation of thousand-block pooling.³ Local number portability enables consumers to migrate among suppliers without losing their telephone number, and, therefore, is essential for enabling competition in local markets. In that sense, the nation's goal of and commitment to facilitating competition in local markets is the "cause" of the costs that are incurred by the NPAC. Number pooling is an important numbering optimization measure that prevents unnecessary squandering of the nation's limited telephone number resources.

This proceeding is linked directly to the nation's commitment to local competition. The benefits of competition are widespread and inure not only to those consumers who choose to change their telecommunications provider (and therefore potentially to avail themselves of local number porting), but also to those consumers who choose to remain with their existing suppliers (and therefore, do not, *explicitly* "cause" LNP costs to be incurred). The latter group of

Nextel Corporation ("Sprint"), United States Telecom Association ("USTelecom"), and XO Communications, LLC ("XO").

³ / With "pooling" providers are assigned telephone numbers in blocks of 1,000 telephone numbers. Prior to the nation's implementation of thousand-block pooling, carriers, regardless of how many customers they might actually anticipate serving in a given local market, would be assigned an entire "NXX" (*i.e.*, 10,000 telephone numbers).

consumers (those who do not change their supplier) benefit from competition because the presence of multiple suppliers theoretically leads to lower prices, more diverse services, and higher quality of service in relevant markets than would prevail absent the competition.⁴

NPAC handles three categories of transactions. As described by Comcast:

The local number portability (“LNP”) database currently is used to perform three types of porting activities: (1) Type 0 ports - inter-service provider ports in which a customer and his or her telephone number are being transferred from one service provider to another; (2) Type 1 ports - intra-service provider ports in which a single service provider is porting a number within its own network; and (3) Type 2 ports – “pooled block” transactions, primarily those in which an entire thousands-block of numbers is assigned to a new blockholder.⁵

B. Present cost recovery mechanism and Verizon proposal.

Under the present cost recovery mechanism, carriers pay for the costs of the NPAC using a revenue-based system: regardless of their share of the quantity of NPAC transactions, carriers with relatively higher interstate revenues pay a relatively higher share of the costs.⁶ In 2005, BellSouth submitted a petition seeking a rulemaking regarding the allocation of NPAC costs,⁷ which is pending FCC review.

AT&T states that Verizon seeks a declaratory ruling to “the effect that LNP Type 1 intra-provider ports and ‘modifies’ of NPAC records are ‘discretionary, elective, and not necessary for the provision of local number portability or [thousands-block number] pooling’ and, as such, can

⁴ / Of course, the existing telecommunications-cable duopoly that dominates most local markets means that the duopolistic behavior in the industry inhibits the possibility of the theoretical benefits of a competitive market.

⁵ / Comcast, at 1.

⁶ / *Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, para. 92 (1998) (“LNP Cost Recovery Order”).

⁷ / BellSouth Corporation’s Petition for Rulemaking to Change the Distribution Methodology for Shared Local Number Portability and Thousands-Block Number Pooling Costs, RM-11299, November 3, 2005 (“BellSouth Petition”).

and should be ‘paid for by the cost-causing provider.’”⁸ LNP Type 1 ports occur when service providers use the NPAC to port a number within their own network, and “‘modifies’ occur when a service provider makes a change within an existing record relating to its own network.”⁹

As described by AT&T:

In the Petition, Verizon seeks to change the way that certain Number Portability Administration Center (NPAC) transactions are paid for. Under the existing method created by the Commission in its 1998 *LNP Cost Recovery Order*, all NPAC transactions are covered under “shared industry costs” of local number portability (LNP)—*i.e.*, the “costs incurred by the industry as a whole, such as those incurred by the third-party administrator to build, operate, and maintain the databases needed to provide number portability” and such costs are recovered on an allocated basis using a carrier’s proportionate share of the total telecommunications revenues within each of the seven NPAC database regions. For a subset of those transactions, Verizon seeks a ruling that would allow the recovery of such costs on a cost-causer or usage-method basis.¹⁰

III. COMMENTS

A. Consumers’ interest is to ensure that NPAC cost recovery is competitively neutral.

Consumers have an interest in ensuring that the FCC establishes cost recovery policies that incorporate economically efficient pricing signals for the underlying costs that suppliers confront to enable consumers to migrate seamlessly among providers (*i.e.*, being able to keep or to “port” their telephone number) and that suppliers confront to use numbering resources efficiently (*i.e.*, to implement thousand block pooling). Consumers also have a stake in ensuring that NPAC costs are distributed fairly among providers, and that the cost recovery mechanism

⁸ / AT&T, at 2, cites omitted.

⁹ / *Id.*, citing Verizon Petition, at 6-7.

¹⁰ / AT&T, at 1, quoting and citing *LNP Cost Recovery Order*.

does not unduly favor incumbent carriers, thereby jeopardizing the development of local competition.

The comments in this proceeding underscore the divergence of views regarding the proper mechanism for such cost recovery to occur. Viewed broadly, the “cause” of the NPAC costs is the goal of competition. Although Verizon and others seek to depict certain transactions as “discretionary,” Verizon has failed to demonstrate that the transactions are truly “elective.” As Comcast explains, ILECs obtained most of their North American Numbering Plan (“NANP”) numbers before the advent of number portability and thousands block pooling, and, therefore “Comcast and other competitive LECs must rely on Type 1 ports to manage their NANP numbers much more frequently than their incumbent ILEC rivals.”¹¹ Incumbent carriers, unlike new entrants, are typically able to use the Local Exchange Routing Guide (“LERG”) to accomplish Type 1 ports.¹² Therefore, it is misleading to infer that ILECs “elect” to use NPAC less frequently than do competitive local exchange carriers (“CLEC”).

B. There are far more pressing matters for the FCC to address.

Numerous key policy matters await the FCC’s deliberation, which are significantly more important and overdue for decision-making than is the review of the way in which NPAC costs are recovered. For example, a flawed separations process and excessive special access rates are more important for resolution than NPAC issues raised by Verizon. Furthermore, local competition decisions issued since 1996 have been tilted toward the incumbent local exchange carriers (*e.g.*, Section 271 authority, unbundled network elements, mergers). By contrast, in the narrow instance of NPAC cost recovery, ILECs, having not yet prevailed with their view, seek to

¹¹ / Comcast, at 2.

¹² / *Id.*

shift NPAC cost recovery from themselves to newer entrants. However, initial comments fail to demonstrate that Verizon's petition has merit as a matter of substance and clearly demonstrate that the Petition is procedurally flawed.

C. Comments demonstrate that the Petition is procedurally flawed.

Entirely apart from the merits of the specific cost recovery modification that Verizon proposes, initial comments persuasively explain that the FCC should not approve Verizon's Petition because such approval would constitute a piecemeal, ad hoc approach to examining NPAC cost recovery. According to AT&T, Verizon proposes a "piecemeal solution" which would "cause unnecessary complications and unintended consequences and does not fully address the inequities in the existing cost-recovery scheme."¹³ According to AT&T, "[t]he better plan is for the Commission to conduct the rulemaking requested by BellSouth Corporation (BSC) in 2005 and to have all NPAC transactions paid for on a cost-causer basis, including those covered by Verizon's Petition." Rate Counsel disagrees with the substance of AT&T's argument, but concurs with AT&T that the FCC should not be evaluating Verizon's "ad hoc"¹⁴ and "piecemeal"¹⁵ proposal.

AT&T recommends instead that the Commission open a rulemaking proceeding with the purpose of replacing the existing revenue-based cost recovery mechanism with a usage-based cost recovery mechanism. AT&T does not oppose the particular "piece" that Verizon proposes, but rather seeks more comprehensive modification than the partial approach it asserts Verizon's

¹³ / AT&T, at 1-2, citing BellSouth Petition.

¹⁴ / AT&T, at 2.

¹⁵ / *Id.*, at 1.

proposal represents.¹⁶ According to AT&T, the adoption of Verizon's proposal would create the illusion of establishing competitive neutrality, would be administratively complex (because cost recovery would then be based on both usage-based and revenue-based mechanisms), and it is not necessarily good policy to seek to limit growth in NPAC transactions.¹⁷

Comcast similarly opposes the piecemeal approach of Verizon's Petition,¹⁸ but, unlike AT&T, also opposes the Petition on substantive grounds, contending that the Petition would be unfair for CLECs.¹⁹ Comcast contends that Verizon exaggerates the extent to which carriers can limit the quantity of their Type 1 ports.²⁰ COMPTTEL also opposes Verizon's Petition on procedural grounds, and asserts that the FCC should address cost recovery in a rulemaking proceeding.²¹

D. Cost causation

Cost causation is not as unambiguous as some comments imply. CenturyLink seemingly detects a bright line between typical shared industry costs and the purportedly discretionary costs that the Verizon Petition encompasses, and, based on that delineation, recommends that the FCC approve Verizon's proposal to base cost recovery for the latter category of transactions on usage, pending the FCC's more comprehensive review of the cost recovery mechanism for all NPAC costs.²² Sprint supports Verizon's petition, but opposes usage-based cost recovery of Type 0 (inter-service provider)

¹⁶ / *Id.*, at 8.

¹⁷ / *Id.*, at 9.

¹⁸ / Comcast, at 2-3.

¹⁹ / *Id.*, at 6.

²⁰ / *Id.*

²¹ / COMPTTEL, at 5.

²² / CenturyLink, at 5-6.

transactions.²³ Sprint concurs with Verizon's rationale that the Type 1 port and modify transactions are "elective" and undertaken for the sole benefit of the company undertaking them.²⁴

CenturyLink supports Verizon's Petition, and concurs that the transactions encompassed by Verizon's Petition "are clearly discretionary ones that should be borne by the service provider itself."²⁵ As depicted by CenturyLink, the costs encompassed by Verizon's petition do not relate to number porting or number pooling, and for this reason, should not be recovered on a revenue-basis.²⁶ Instead, according to CenturyLink, "service providers that generate such transactions must pay for them."²⁷

As stated by AT&T, "Section 251(e)(2) of the Act requires that the costs for number pooling (as part of "numbering administration") and for LNP "be borne by all telecommunications carriers on a competitively neutral basis."²⁸ AT&T further states:

The standard the Commission adopted for deciding whether a cost-recovery mechanism was competitively neutral was that it: "(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."²⁹

Rate Counsel concurs with AT&T's summary of the criteria and principles that guide the FCC's deliberations, but disagrees with AT&T's proposed interpretation of those principles. AT&T recommends that the FCC deny Verizon's petition, and instead proceed to a rulemaking whereby

²³ / Sprint, at 1 and footnote 1.

²⁴ / *Id.*, at 2.

²⁵ / CenturyLink, at 1.

²⁶ / *Id.*

²⁷ / *Id.*, at 2, cite omitted.

²⁸ / AT&T, at 3 citing 47 U.S.C. § 251(e)(2).

²⁹ / AT&T at 3, citing *LNP Cost Recovery Order*, 13 FCC Rcd at 11731-32 para. 53.

cost recovery would be based not on revenues but rather on usage.³⁰ If CLECs' disproportionate use of NPAC stems directly from their status as new entrants (that is, if ILECs are able to avoid NPAC transactions because of their historic and embedded access to numbering resources), then a usage-based system for allocating costs would simply reward certain carriers for being incumbents and penalize others for the fact that they lack the same level of numbering resources. Such an outcome would not be competitively neutral.

Indeed, CLECs contend that this category of transactions (Type 1 ports) is not "elective" but rather is directly related to number porting. For example, Comcast explains why CLECs cannot rely on the LERG to avoid Type 1 ports whereas ILECs can, and states that "less than 15 percent of Comcast's central office codes could be routed via the LERG, whereas almost 98 percent of Verizon's central office codes could be routed in this manner."³¹ Verizon's Petition lacks merit because it proposes a cost recovery system that would penalize CLECs for a circumstance not of their own making: namely, as new entrants, they must rely more on NPAC than do ILECs.

Rate Counsel concurs with Comcast's and COMPTTEL's recommendation that the FCC deny Verizon's petition.³² CLECs, as an inevitable result of their position in markets, have a disproportionate number of customers with ported numbers, and therefore rely disproportionately on the NPAC database to manage their numbers.³³ Rate Counsel concurs that NPAC cost recovery mechanism needs to recognize and balance this incumbency advantage. Therefore, the FCC should not alter its cost recovery system.

³⁰ / AT&T, at 3, 10.

³¹ / Comcast, at 7-8.

³² / Comcast, at 14; COMPTTEL, at 1.

³³ / COMPTTEL, at 2-3.

COMPTEL similarly refutes Verizon's characterization of Type 1 ports as "elective."³⁴ According to COMPTEL, the transactions performed via the NPAC are a direct result of Local Number Portability and Number Pooling and therefore are appropriately "shared costs" under any interpretation of the rules.³⁵ Indeed, AT&T raises the possibility that pooled block issues may have merit, stating:

If, in the words of Verizon, providers are using the databases for "network grooming or technology upgrades," there may be good reasons for doing so besides shifting costs to other providers. That is, there may be benefits to providers and their customers in using the databases creatively. For example, it may provide a quicker, more cost efficient, and more certain (fault-free) method of updating networks. While AT&T agrees with Verizon that these providers ought to be paying for these transactions on the cost-causer method, AT&T asserts that good policy would appear to counsel the encouragement of the creative use of these resources for the good of all providers and their customers.³⁶

Level 3's primary recommendation appears to be that the FCC defer the issues raised in Verizon's Petition pending the award of the next NPAC contract (which expires in 2015),³⁷ and that, through the local number portability administrator selection process, the North American Numbering Council "gather the appropriate industry participants" and "conduct a full discourse concerning the definition of cost-causing transactions."³⁸ Rate Counsel concurs with Level 3's recommendation. As these comments discuss earlier, Rate Counsel is not persuaded of the urgency of Verizon's Petition, and furthermore, Verizon has failed to demonstrate the merits of its Petition.

³⁴ / *Id.*, at 4.

³⁵ / *Id.*, at 6.

³⁶ / AT&T, at 9-10, citing Verizon Petition, at 7.

³⁷ / Level 3, at 1-2.

³⁸ / *Id.*, at 2.

IV. CONCLUSION

Rate Counsel urges the Commission to reject Verizon's Petition because it is procedurally deficient and substantively flawed for the reasons discussed in these reply comments.

Respectfully submitted,

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