

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

In the Matter of

Petition of Verizon and Verizon Wireless for
Declaratory Ruling to Assess NPAC Database
Intra-Provider Transaction Costs on the
Requesting Provider

WC Docket No. 11-95

REPLY COMMENTS OF VERIZON AND VERIZON WIRELESS

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As Verizon and Verizon Wireless (“Verizon”) demonstrated in their *Petition*,¹ NPAC database costs have experienced explosive growth over the past five years. These costs are driven mainly by the frequent use of the NPAC databases by certain service providers to accomplish tasks unrelated to number portability or pooling, such as grooming their own networks and offering new services to customers. The costs of these intra-provider ports and modify transactions are not borne by those providers that request and directly benefit from them. Rather, other providers like Verizon largely foot the bill through the current revenue-based cost allocation system. As various commenters recognize, this system is inconsistent with the Commission’s *Third Report and Order*,² which explicitly excludes the sharing of costs for *any* NPAC service that is discretionary, elective, and not necessary for the provision of local number

¹ Petition of Verizon and Verizon Wireless for Declaratory Ruling to Assess NPAC Database Intra-Provider Transaction Costs on the Requesting Provider, WC Docket No. 11-95 (May 20, 2011) (“*Petition*”).

² *Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701 (1998) (“*Third Report and Order*”).

portability or pooling,³ and with Section 251 of the Act, which requires that the cost allocation be competitively neutral.

Because Verizon's *Petition* threatens the huge subsidies some providers receive from their competitors, certain commenters desperately seek to preserve the status quo and set forth various objections – both substantive and procedural. As explained below, these objections are meritless. The Commission should grant Verizon's *Petition* and declare that LNP Type 1 intra-provider ports and modifies of NPAC records are excluded from the shared NPAC database costs. While Verizon supports a rulemaking that re-examines the requirement that providers share all inter-provider porting and pooling costs, the Commission should not delay acting on Verizon's *Petition* in the interim since a remedy for this inequity is long overdue.

DISCUSSION

I. Commenters Support Allocating the Costs of Intra-Provider Transactions to the Provider Initiating the Transactions.

The comments filed in this proceeding make clear that the NPAC database costs of intra-provider ports and modifies should not be shared among all providers. Consistent with the *Petition*, AT&T and CenturyLink demonstrate that the current cost-allocation method in which providers are forced to subsidize their competitors' intra-provider transactions is not "competitively neutral" as required by Section 251(e)(2) of the Communications Act.⁴ As Sprint emphasizes, granting the *Petition* would be consistent with the Commission's long-standing principle that "costs should be attributed to their source whenever possible."⁵ Taken together, these comments belie XO's bare assertion that the *Petition* is simply Verizon's attempt to "avoid[]

³ *Id.*, ¶ 92.

⁴ See AT&T Comments at 3-8; CenturyLink Comments at 4-5.

⁵ Sprint Comments at 2-3 (internal citation omitted).

paying its equitable share of industry costs.”⁶ There is nothing “equitable” about subsidizing competitors’ business operations.

II. The Commission Should Reject the Objections to the *Petition* by Certain Providers That Seek To Retain Their Current Subsidies.

The Commission should reject the arguments set forth by a few commenters to maintain the current allocation system and thus preserve their regulatory advantage. Their various claims cannot withstand scrutiny.

First, some commenters assert that they would have a disadvantage competing with ILECs because the vast majority of their customers were acquired by competitive ports and thus have a record in the NPAC database, while an ILEC’s customers are less likely to have records there.⁷ While ILECs may have a smaller percentage of customers with NPAC database records and thus may be able to perform certain network changes for their customer base without engaging in as many NPAC transactions as other providers, those commenters opposing the *Petition* ignore the realities of today’s competitive marketplace.

Importantly, the opposing commenters fail to account for the ILECs’ wireless affiliates. Verizon’s and AT&T’s wireless operations are the growth segments of the companies’ businesses – not the carriers’ wireline operations. Since the *Third Report and Order* was released in 1998, Verizon’s and AT&T’s wireless operations have rapidly gained subscribers as a result of porting in customers from wireless or wireline competitors (or even the ILEC affiliate itself) or pooling. As a result, Verizon’s and AT&T’s wireless carriers must establish and maintain a significant number of NPAC database records and thus would be as likely as the opposing commenters to perform intra-provider NPAC transactions. Yet both Verizon and

⁶ XO Comments at 1.

⁷ See XO Comments at 3; Comcast Comments at 2; COMPTTEL Comments at 2.

AT&T support paying the *full* cost of the intra-provider ports and modify transactions they initiate and are not seeking handouts from other providers to fund these activities. Accordingly, XO's objection that "Verizon stands to gain at the expense of . . . wireless carriers, if it succeeds" is nonsensical.⁸

Moreover, the nature of wireline competition is rapidly evolving. As cable companies have begun offering interconnected VoIP service, competition has largely shifted from standalone voice to bundles of services that include broadband and video. Cable providers have ported in millions of customers from ILECs and other carriers, but ILECs have not stood idly by as their customers leave. Verizon, for example, has invested billions of dollars to deploy its fiber-to-the-home network so that it can better compete with cable in providing fast broadband, robust video, and interconnected VoIP services. As a result, Verizon has won back (i.e., ported in) many customers that had ported away for a bundled offer from a cable competitor. For their part, customers have demonstrated a willingness to readily switch providers for a more attractive offer. Thus, Verizon's wireline customer base is increasingly more likely to have NPAC database records with each passing day.

The opposing CLECs' assertions that granting the *Petition* would be anticompetitive based on selective statements from the *Third Report and Order* concerning competition and the reasons for sharing certain costs of the NPAC database are misplaced.⁹ It cannot be disputed that there has been a fundamental shift in the marketplace since that order was released in 1998. Nor is the four-year old NANC Local Number Portability Administration Working Group report cited by

⁸ XO Comments at 9. Sprint's support for the *Petition* further undermines XO's assertion. See Sprint Comments.

⁹ See, e.g., Comcast Comments at 3-4, 13.

XO recent enough to be relevant to this proceeding.¹⁰ Since 2007, ILEC winbacks from cable companies have accelerated significantly, particularly when some ILECs like Verizon and AT&T have deployed technology to begin offering video services.

Second, certain CLECs claim that all their intra-provider port and modify transactions are related to inter-provider ports or pooling and therefore, their NPAC transaction costs must continue to be subsidized by all providers. Specifically, XO proposes the following standard for determining if transactions are “necessary” for porting or pooling: whether the “transactions benefit customers and the industry as a whole.”¹¹ XO further suggests that any transaction would qualify if absent the NPAC transaction, “routing and customer service quality may be compromised.”¹² Likewise, Comcast recites Cox’s prior suggestion that transaction costs should be shared when the transactions are “a part of proper network management, which benefits all customers.”¹³

This boundless, proposed standard is flatly inconsistent with the *Third Report and Order*.

That Order clearly states that not all NPAC costs must be shared:

Notwithstanding that other costs of the regional databases will be allocated, we determine that regional database administrators may assess individual carriers and non-carrier third parties reasonable usage-based charges for *discretionary services* such as audits and reports. Because these services are *elective to the parties requesting them, and not necessary for the provision of number portability*, usage-based charges should not have a competitive impact.¹⁴

¹⁰ XO Comments at 8.

¹¹ *Id.* at 4.

¹² *Id.* at 6.

¹³ Comcast Comments at 9 (internal citation omitted).

¹⁴ *Third Report and Order* ¶ 92 (emphasis added).

Regardless of whether certain transactions could be somehow characterized as beneficial, the Commission sought to distinguish those NPAC transactions that were not “necessary” for porting or pooling. The Commission should clarify this paragraph of the *Third Report and Order* by declaring that intra-provider ports and modifies are not necessary for porting and pooling.

As Verizon previously explained, service providers perform “intra-service provider ports” and “modifies” to achieve a particular internal business objective. Verizon agrees with XO that such transactions are not initiated for improper reasons, as many of them are related to network grooming, technology upgrades, or error correction.¹⁵ Because these transactions are so attenuated from the porting in of the customer or a pooling transaction,¹⁶ however, they should not be paid for by other providers.

Under XO’s and Comcast’s approach, every NPAC database activity would be subsidized – even those the Commission specifically excluded in paragraph 92. Audits and reports of NPAC records, for example, certainly would “benefit customers and the industry as a whole.”¹⁷ Providers could use those audits and reports to help verify the accuracy of the NPAC records or to help plan for network modifications that are aimed at improving service to customers. And the industry benefits from these activities to the extent that calls from customers of other providers to that provider’s customer are routed correctly. Yet in the *Third Report and Order*,

¹⁵ Cf. XO Comments at 4-5.

¹⁶ In its Comments, XO describes certain NPAC activities related to porting, such as status updates during the port and due date changes. See XO Comments at 7. These activities occur during a pending port as part of the process to create an NPAC record. Contrary to XO’s claim, these modifications are not billable transactions and therefore would not be affected should the Commission grant the *Petition*.

¹⁷ XO Comments at 4.

the Commission appropriately determined that such activities are too removed from inter-provider porting and pooling to be treated as shared costs.

The same rationale espoused by XO and Comcast also applies to basic activities that a provider performs after it ports in a customer or begins providing service to a customer via a telephone number acquired as a result of a pooling transaction. For example, providers must maintain their switch translations for calls to route correctly to their customers. Some providers must maintain their outside plant for calls to be delivered. However, these basic responsibilities are part of the cost of running a business that provides reliable voice communications. For the same reason providers should not be forced to subsidize their competitors with respect to these basic functions that are required to provide service to their customers – even though they may “benefit customers and the industry as a whole” – intra-provider ports and modify transactions should be excluded from shared NPAC costs.

The Commission should also reject Level 3’s expansive approach to shared NPAC costs. Level 3 suggests that because intra-provider ports may be performed as a result of a “merger or other similar transaction,” those costs must be shared.¹⁸ Otherwise, Level 3 claims that it would not be able to “achieve the economic and network synergies of such transactions.”¹⁹ The parties to a merger or acquisition enter into the transaction because they stand to benefit from the synergies. As such, they alone should bear any integration costs. There is no basis for other providers to subsidize a transaction.

Third, some commenters complain that the costs should continue to be subsidized because there may not be alternatives for every intra-service provider port or modify transaction.

¹⁸ Level 3 Comments at 4.

¹⁹ *Id.* at 6.

For example, Comcast claims that it must perform an intra-provider port to change the routing path for certain numbers via the Location Routing Number (LRN).²⁰ But Comcast fails to acknowledge that providers are making a business decision to change the routing path. A rational decision should have benefits to the provider that outweigh the costs. However, providers cannot appropriately weigh the costs when the NPAC transaction costs are subsidized by other providers. While XO claims that there is “no incentive for these providers to abuse or overuse the NPAC databases,”²¹ basic economic theory dictates that a provider that receives a resource without paying the cost will overuse the resource.²²

Even if there were no alternatives to *every* intra-provider transaction as some providers vigorously assert, that would hardly justify a never-ending requirement by incumbent providers to subsidize their competitors’ use of the NPAC database, particularly when a subsidy already exists for the competitive port or pooling transaction that creates the NPAC record. Level 3 admits that providers have come to “rely” on such subsidies.²³ But as noted above, the plain language in paragraph 92 of the *Third Report and Order* rejects the notion that the cost of every NPAC service should be subsidized. All providers should be required to weigh the actual costs and consider alternatives, including ways to minimize the number of NPAC transactions, before proceeding with a change to their networks that involves LNP Type 1 intra-provider ports and modifies of NPAC records.

²⁰ Comcast Comments at 7 and 10.

²¹ XO Comments at 7.

²² See, e.g., *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, ¶ 20 (2001); see also AT&T Comments at 7-8.

²³ Level 3 Comments at 3.

Verizon, which today manages and maintains tens of millions of NPAC database records due to winbacks (i.e. porting in) and the acquisition of numbering resources through pooling, mitigates the number of NPAC transactions it initiates during network migrations. Verizon will typically plan and construct its network grooming and migration projects such that the NXX code that contains a switch's LRN is rehomed to the target switch in the Local Exchange Routing Guide. This changes the routing for all telephone numbers, both ported and pooled, that are associated with that LRN, as well as all the "native" (i.e. non-ported and non-pooled) telephone numbers that are contained in that NXX code. This eliminates the necessity to initiate NPAC transactions for these numbers. Other providers – not just ILECs – could adopt this approach for their migration projects, but they have little incentive to do so when their NPAC transactions are subsidized.

Fourth, some commenters claim that granting the *Petition* would introduce substantial complexity to Neustar's billing process.²⁴ Such concerns are unfounded. It would not be burdensome for Neustar to distinguish "elective" transactions from "competitive" transactions for billing purposes. The NPAC currently uses objective criteria to classify all transactions into a variety of categories based on the type of transaction and the reason for the transaction. The NPAC's classifications identify transactions that further local number portability and pooling and those that do not.

III. A Declaratory Ruling Is the Most Appropriate and Efficient Way To Resolve This Issue.

Comcast and COMPTTEL half-heartedly mount a procedural defense of their regulatory advantage. They claim that Verizon's petition requires a rulemaking proceeding, rather than a

²⁴ See Comcast Comments at 11; AT&T Comments at 9.

declaratory ruling brought under 47 C.F.R. § 1.2.²⁵ The Commission should reject this argument because Verizon’s *Petition* is well within the confines of declaratory relief.

Section 1.2 of the rules, which refers to § 554(e) of the Administrative Procedure Act, 5 U.S.C. § 554(e), gives the Commission the authority to issue declaratory orders “to terminate a controversy or remove an uncertainty.” It is well-settled that interpretative rules – but not legislative rules – can be the subject of a petition for a declaratory ruling.²⁶ The Court of Appeals for the D.C. Circuit has made clear that an interpretative rule must “derive a proposition from an existing document whose meaning compels or logically justifies the proposition. The substance of the derived proposition must flow fairly from the substance of the existing document.”²⁷

The *Petition* falls squarely within the Section 1.2 definition. Verizon requests that the Commission clarify the meaning of “shared costs” in Section 52.32(a) of the rules as explained by paragraph 92 of the *Third Report and Order*, which explicitly excludes the sharing of costs for *any* NPAC service that is discretionary, elective, and not necessary for the provision of local number portability or pooling. Verizon is not seeking to impose any new requirements on providers that use the NPAC database; rather, Verizon requests that the NPAC implement the *Third Report and Order* consistent with the allocation of costs that the Commission intended. Indeed, it is the open-ended standard advocated by opponents of the *Petition* that would require the Commission to modify its rules through a notice and comment proceeding.²⁸ In any event,

²⁵ See Comcast Comments at 12-13; COMPTTEL Comments at 5.

²⁶ See *Cent. Tex. Tel. Coop., Inc. v. FCC*, 402 F.3d 205, 210 (D.C. Cir. 2005).

²⁷ *Id.* at 212 (internal citation omitted).

²⁸ See *supra* at 5-6.

commenters have not been prejudiced as they have had ample opportunity to oppose the *Petition* and have done so.

In a related vein, two other commenters suggest that the Commission should refrain from acting on this *Petition* and address the issue in another manner. Specifically, Level 3 proposes that the Commission address this when the next NPAC contract is awarded.²⁹ But the NPAC must ensure that its activities are consistent with Commission's rules and orders today. The current contract will expire on June 30, 2015 – *almost four years from now*. That is simply too long to wait as the *Petition* amply demonstrates the extent to which NPAC costs have been – and continue to – spiral, thus forcing a few providers to pay millions of dollars *each year* to subsidize other providers' intra-provider transactions.

AT&T's proposal suffers from the same infirmity. AT&T objects to the *Petition* not on the substance, but because it does not go far enough and may distract the Commission from a rulemaking in which it will designate all transactions to be paid for by the cost causer.³⁰ As Verizon noted in its *Petition*, it has been over five years since AT&T filed a petition to initiate such a rulemaking. Verizon has no reason to believe that the Commission will act on AT&T's petition in the near future, much less completely overhaul the NPAC payment system as AT&T requests. Fundamentally, Verizon does support AT&T's position, but sees no reason to delay interim relief from the escalating annual NPAC costs that it has been over-paying for years, despite the plain language of the *Third Report and Order*.

²⁹ Level 3 Comments at 2.

³⁰ See AT&T Comments at 1-2 & 9-10.

CONCLUSION

For the foregoing reasons, the Commission should grant Verizon's *Petition* and declare that LNP Type 1 intra-provider ports and modifies of NPAC records should be paid for by the provider that initiates the transactions.

Respectfully submitted,

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