

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion into Competition for
Local Exchange Service.

Rulemaking 95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on the
Commission's Own Motion into Competition for
Local Exchange Service.

Investigation 95-04-044
(Filed April 26, 1995)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING NUMBER POOLING COST RECOVERY**

This ruling is issued to solicit supplemental cost data for the purpose of implementing recovery of eligible costs associated with state-mandated number pooling pursuant to the authority delegated by the Federal Communications Commission (FCC). In response to a previous ruling issued on February 2, 2001, parties submitted certain cost data regarding state-mandated number pooling implementation, and filed comments related to the recovery of the submitted cost data. This ruling is issued soliciting additional information regarding the cost data that was previously filed and in recognition of most recent FCC directives regarding number pooling cost recovery requirements.

Framework for Cost Recovery

On March 31, 2000, the FCC released its First Order in the Number Resource Optimization (NRO) docket. Although the FCC adopted thousand-block number pooling as a mandatory nationwide numbering resource

optimization strategy, it also continued to permit the states to implement pooling pursuant to existing delegations of authority pending the national pooling implementation. Additionally, states conducting their own number pools were required to develop their own cost recovery plan for the joint and carrier-specific costs of implementing and administering pooling in each NPA in question. On December 28, 2001, the FCC released its Third Report and Order and Second Order on Reconsideration in which it further addressed number pooling cost recovery. In its December 28, 2001 Order, the FCC expressly directed state commissions that were implementing thousand-block number pooling to commence cost recovery actions for state-mandated number pools.

(See paragraph 25.)

Actions Taken to Date to Implement Cost Recovery of State-Mandated Number Pools

In Decision (D.) 00-07-022, the Commission adopted procedures for the allocation of shared-industry costs of number pooling among carriers, and declined to adopt any special cost recovery procedures for costs only indirectly related to number pooling. The Commission directed that a further record be developed as a basis to determine any appropriate cost recovery vehicle for carrier-specific costs directly related to state-mandated number pooling trials.

Accordingly, the ALJ issued a ruling on February 2, 2001, directing parties to submit comments regarding the appropriate recovery mechanism for carrier-specific costs of state mandated number pools. Comments were to address in detail how parties propose that carriers recover their specific pooling costs, and what further procedural actions the Commission needs to take in order to implement cost recovery.

Carriers holding 10 or more NXX codes in each of the respective NPAs in which pooling had been implemented were directed to submit a detailed

showing of carrier-specific number pooling costs. Each carrier was to present a detailed description of the costs, together with the dollar amount of costs by category. The data were to be segregated between one-time start-up costs by number pool versus ongoing monthly costs associated with the operation of the number pool. Carriers were to identify, where appropriate, the relevant unit of measurement (*e.g.*, cost per-switch or per-block donated or drawn, etc. Any pooling costs subject to recovery must exclude any costs that have already been included or should be included for recovery in connection with local number portability implementation. Carriers' cost studies were also to take into account the cost savings associated with thousands-block number pooling in comparison with other numbering practices that result in more frequent area code changes. Carriers were also to present their proposal as to how to recover those costs (*e.g.*, how much in fixed charges; how much in variable charges, etc.). Comments were filed February 26, 2001, and reply comments were filed on March 9, 2001.

Discussion

Carriers Required to Submit Cost Data

In the ALJ ruling issued on February 2, 2001, cost data was solicited from carriers holding 10 or more NXX codes in each of the respective NPAs in which pooling had been implemented at that time: (*i.e.*, 310, 415, 714, and 909.) Carriers holding fewer than 10 NXX codes in each of those NPAs were not required to submit cost data.

Pacific Bell (Pacific) and Verizon California, Inc. (Verizon) each submitted cost data,¹ and requested that the Commission adopt procedures for recovery of those costs. Teligent Services, Inc. provided cost data on a confidential basis, but indicated it had no intention of seeking any explicit recovery mechanism for its carrier-specific California number pooling costs. Remaining carriers that were directed to submit data filed motions seeking to be relieved of the directive to file number pooling cost data. Worldcom, Inc. (Worldcom) and AT&T Communications of California (AT&T) filed a joint motion on February 26, 2001. Pac-West filed a separate motion on February 27, 2001. Such parties generally object to the requirement to provide carrier-specific cost data since they are not seeking any special recovery of their number pooling costs, and argue that compiling such data would be costly and burdensome. Pacific and Verizon filed replies, however, arguing that such requests for exemption should be rejected because the Commission should ascertain the full cost of implementing state-mandated number pools.

The motion of parties representing those carriers seeking to be relieved of the obligation to submit carrier-specific number pooling cost data is granted. The reason for requesting cost data was for the purpose of determining a cost recovery provision. Since carriers other than Pacific and Verizon are not requesting authorization for any specific cost recovery provision, there is no need to burden other carriers with compiling and submitting such cost data. Limiting

¹ Verizon filed its cost data under seal subject to a confidentiality order. No party opposed Verizon's request to file the data under seal. Accordingly, Verizon's motion to file under seal is granted.

the cost data requirement only to Pacific and Verizon is consistent with the cost recovery approach used at the federal level.

The FCC stated that its federal cost recovery mechanism would apply to LECs subject to “price cap” regulation, and that such LECs could recover eligible number pooling costs through “an exogenous adjustment to access charges.” Carriers not subject to rate regulation were permitted to recover their number pooling costs “in any lawful manner.”

Section 251(e)(2) of the Telecommunications Act (Act) requires competitively neutral cost recovery mechanisms for federally mandated number pooling. Inasmuch as the FCC has delegated authority to the Commission to implement number pooling, we are subject to the same federal statutory requirements. The FCC’s Telephone Number Portability Order offers guidance regarding competitively neutral criteria for cost recovery:

First, “a ‘competitively neutral’ cost recovery mechanism should not give one service provider an appreciable, incremental costs advantage over another service provider, when competing for a specific subscriber.” Second, the cost recovery mechanism “should not have a disparate effect on the ability of competing service providers to earn normal returns on their investments.”²

The FCC thus has deemed its dual approach to cost recovery between Incumbent Local Exchange Carriers (ILECs) and Competitive Local Exchange Carriers (CLECs) to be consistent with the statutory requirement that cost

² Telephone Number Portability, *Fourth Memorandum Opinion and Order on Reconsideration*, CC Docket No. 95-116, RM 8535, FCC 99-151, at ¶ 32 (rel. July 16, 1999) (citing Telephone Number Portability, CC Docket No. 95-116, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Red 8352, 8420-21 (1996)).

recovery be competitively neutral. Therefore, consistent with the federal approach, the review of number pooling costs for state-mandated number pools shall be limited only to Pacific and Verizon since only they are subject to “price cap” regulation.

Adequacy of ILEC Number Pooling Cost Filings

Parties representing various CLECs object to the ILECs’ number pooling cost data submission as being deficient as a basis for pass-through recovery from customers. Specifically, the parties argue that Pacific and Verizon have failed to indicate how costs have been segregated between federal and state-mandated pooling programs. Before any cost recovery is approved, commenters argue that federal and state pooling costs must be reconciled to ensure that Californians do not disproportionately subsidize the ILECs’ national pooling programs. Commenters also argue that the Commission should ascertain that any pooling cost recovery exclude system upgrades that are already being recovered through number portability surcharges. The potential for double cost recovery is an issue to the extent that number pooling utilizes number porting technology.

It is concluded that the cost data submitted to date by Pacific and Verizon does not adequately explain or document the basis for determining to what extent the claimed costs comply with the cost recovery criteria outlined by the FCC. As noted by commenters, much of the cost data submitted, particularly by Pacific, consists of lists of undeciphered cost categories with no showing of how the costs meet the proper standards for cost recovery. The cost data fails to provide assurance that there is no double-counting of number portability-related costs or federally-mandated pooling costs. Commenters also note that Verizon fails to provide cost savings data relating to the deferral or avoidance of new area codes through number pooling. Moreover, questions arise as to whether the

pooling costs may include excess overhead beyond what is needed to efficiently implement number pooling.

Therefore, further supporting explanation and justification must be submitted by Pacific and Verizon to provide a proper record upon which the Commission can ascertain that the costs are adequately explained, documented, and conform with FCC cost recovery criteria. Once the supplemental information has been provided, and comments filed thereon, further steps can be taken to determine an appropriate cost recovery for state-mandated number pooling for Pacific and Verizon.

Criteria for Cost Recovery

As previously prescribed in the FCC *First Report and Order*, the same strict standards used to evaluate LNP costs also apply to thousand-block number pooling.³ Under these standards, to be eligible for the extraordinary recovery, thousand-block number pooling costs must satisfy each of three criteria identified in the LNP proceedings.

First, only costs that would not have been incurred “but for” thousand-block number pooling are eligible for recovery.⁴ Second, only costs incurred “for the provision of” thousand-block number pooling are eligible for recovery.⁵ Finally, only “new” costs are eligible for recovery.⁶ To be eligible for extraordinary recovery, carriers’ thousand-block number pooling shared industry and carrier-specific costs directly related to thousand-block number

³ See *First Report and Order*, 15 FCC Rcd at 7673, paras. 218-19.

⁴ See *id.* at 7673, para. 218.

⁵ See *id.*

⁶ See *id.* at 7673, para. 219.

pooling must satisfy all three of these criteria.⁷ This three-pronged test is intended to prevent double recovery of number pooling and number portability costs⁸ and also to prevent recovery of costs not directly related to number pooling.⁹

In its Third Report and Order, the FCC provided interpretation as to how to apply these tests. For purposes of cost recovery for state-mandated pooling, the FCC interpretations shall apply. Thus, only costs incurred “for the provision of” number pooling are eligible for recovery through the extraordinary mechanism, but these must also be costs that would not have been incurred “but for” thousand-block number pooling.¹⁰ Accordingly, only the demonstrably incremental costs of thousand-block number pooling may be recovered.¹¹

For purposes of LNP cost recovery, the FCC adopted a narrow definition of the phrase “for the provision of...” The only eligible LNP costs were “costs carriers incur specifically in the provision of number portability services, such as for the querying of calls and the porting of telephone numbers from one carrier

⁷ Carrier-specific costs not directly related to thousands-block number pooling implementation are not eligible for recovery. *See id.* at 7670, para. 211.

⁸ Because changes to the network for both thousand-block number pooling and number portability are similar, and because carriers are currently recovering the costs of number portability through a separate end-user charge, carriers were directed to distinguish the costs of providing number portability from the costs of implementing thousand-block number pooling. *See id.* at 7672, para. 216.

⁹ *See id.* at 7672-73, paras. 216-17.

¹⁰ *See id.* at 7673, para. 218.

¹¹ *See id.* at 7672-75, paras. 217-24.

to another.”¹² Similarly, the thousand-block pooling functions for which costs are eligible for special recovery are only those incurred specifically to identify, donate and receive blocks of pooled numbers, to create and populate the regional databases and carriers’ local copies of these databases, and to adapt the procedures for querying these databases and for routing calls so as to accommodate a number pooling environment.

Costs incurred as an “incidental consequence” of thousand-block number pooling implementation are not incurred specifically in the provision of these narrowly defined thousand-block pooling functions. Thus, costs incurred to adapt other systems to the presence of thousand-block number pooling are not incurred for the provision of thousands-block number pooling and are ineligible for recovery.¹³ Costs for maintenance, repair, billing and other functions that are not directly involved in the provision of thousands-block number pooling are not eligible for special recovery. Similarly, costs incurred to facilitate the continued provision of other services in the presence of number pooling are an “incidental consequence” and are not eligible for recovery.

The third part of the FCC test requires that thousands-block number pooling costs must be “new” costs in order to qualify for special recovery. Costs incurred prior to the implementation of thousands-block number pooling are ineligible for recovery because they are embedded investments that are already subject to recovery through standard mechanisms. Permitting recovery of these

¹² See *LNP Cost Classification Order*, 13 FCC Rcd at 24501, para. 12 (citing *LNP Third Report and Order*, 13 FCC Rcd at 11740, para. 72).

¹³ See *LNP Cost Classification Order*, 13 FCC Rcd at 24501, para. 12 (citing *LNP Third Report and Order*, 13 FCC Rcd at 11740, para. 72).

costs again through the extraordinary mechanism would amount to double recovery.¹⁴ Costs are not “new,” and thus are ineligible for extraordinary treatment as thousands-block number pooling charges, if they were previously incurred, are already being recovered under other recovery mechanisms, or are already being recovered thorough the number portability end-user charge or query charge.

Further Information Required

Before an appropriate amount for number pooling cost recovery can be determined for Pacific or Verizon, an adequate record must be developed establishing that the costs claimed for recovery conform with FCC criteria, and do not duplicate costs already recoverable through the number portability surcharge, or include wasteful or excessive overheads. The cost data submitted to date by Pacific and Verizon do not provide the necessary detail or justification to determine an appropriate cost recovery amount. Accordingly, Pacific and Verizon are directed to provide the information outlined below.

IT IS RULED that:

1. The following additional data is required from Pacific and Verizon, and shall be served and filed no later than March 5, 2002.
 - A. Explain what accounting control processes are used to define, identify, and segregate number pooling costs associated with the federal number pooling program from CPUC-mandated number pooling programs, and from number-portability costs.
 - B. Specifically, for each claimed cost element, identify how it relates to the narrowly defined number pooling functions

¹⁴ See *First Report and Order*, 15 FCC Rcd at 7673, para. 219; see also *LNP Cost Classification Order*, 13 FCC Rcd at 24503, para. 18.

- for which cost recovery is permitted, as outlined above. Also, explain how the claimed cost elements satisfy the three criteria for cost recovery prescribed by the FCC Third Report and Order, as outlined above.
- C. For each of the listed items under the “Description of Work” heading in Pacific’s Exhibit 4, for which a cost is claimed, provide a narrative description as to the nature of the item, how it relates to the implementation of number pooling, and how it differs from costs that would have already been incurred to implement number portability.
 - D. Define and explain the function of all acronyms listed in Pacific’s Exhibit 4 for which a cost is claimed. Vague headings such as “internal implementation” require further explanation and detailed assumptions underlying the cost. For example, what portion of this item constitutes labor charges? What sort of “implementation activities” were conducted, and how much time and person-hours were devoted to them?
 - E. Verizon shall provide a calculation of the cost savings associated with number pooling that is to be offset against costs subject to recovery. If Verizon fails to develop its own independent calculations of savings, it shall, at minimum, calculate a savings provision using the approach applied by Pacific.
2. Pacific and Verizon shall provide data on the costs for each of the additional state-mandated number pools that were implemented during the year 2001, in the same form and detail as indicated above in item 1 above.
 3. Parties may file comments on the supplemental cost filings 15 calendar days after the filings are made.
 4. The previous ruling requiring carrier-specific cost data from all carriers holding 10 or more NXX codes in each of the respective pooling NPAs is hereby amended. Cost data shall only be required from Pacific and Verizon.

5. Further action on authorizing explicit cost recovery for Pacific and Verizon shall be taken following receipt and review of the supplemental filings and comments thereon.

6. Verizon's motion to file its cost data under seal is granted.

Dated February 5, 2002, at San Francisco, California.

/s/ Thomas R. Pulsifer
Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge’s Ruling Regarding Number Pooling Cost Recovery on all parties of record in this proceeding or their attorneys of record.

Dated February 5, 2002, at San Francisco, California.

/s/ Antonina V. Swansen
Antonina V. Swansen

N O T I C E

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