State of California **Public Utilities Commission**
San Francisco

M E M O R A N D U M

Date : January 5, 2006

To : The Commission
(Meeting of January 12, 2006)

From : Helen Mickiewicz, Public Utilities Counsel IV
Laura Gasser, Public Utilities Counsel III

Subject : Comments Before FCC on BellSouth Petition Regarding Allocation of Shared Costs of Local Number Portability and Number Pooling

Recommendation:

The CPUC should file reply comments before the Federal Communications Commission (FCC) on or before February 6, 2006 recommending that, if the FCC implements Bellsouth Corporation's (Bellsouth) requested change to the allocation methodology for Local Number Portability (LNP) shared industry costs and thousands-block number pooling shared industry costs, the FCC (1) should not allow carriers to pass through the shared industry costs by assessing an end-user fee on customers, and (2) should verify Bellsouth's shared industry cost claims.

Background:

A. LNP and Thousands-Block Number Pooling

Local number portability technology allows customers to retain their telephone numbers when changing local service providers. The 1996 Telecommunications Act (1996 Act) requires all local exchange providers (LECs) to "provide, to the extent technically feasible, number portability in accordance with the requirements prescribed by the [FCC]." 47 U.S.C. § 251(b)(2). The FCC extended that requirement to wireless carriers. *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCCR 8352 (1996).

Thousands-block number pooling is a conservation measure that breaks up the 10,000 telephone numbers in each central office code into ten blocks of 1,000 numbers and allocates blocks to different carriers. The FCC adopted thousands-block number pooling in 2000. *Number Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCCR 7574, ¶ 122 (2000) (Number Pooling Order).

Both LNP and thousands-block number pooling are implemented through a nationwide system of regional databases. When a customer takes her telephone number with her when switching from one LEC to another, the new carrier "ports" the customer's number from the former carrier by uploading the telephone number's information into the appropriate regional database. The regional database administrator then downloads the database updates to the carriers' systems. Similarly, when a provider receives a thousand-block of numbers, the administrator modifies the regional database to reflect the allocation.

B. Paying for LNP and Thousands-Block Number Pooling

The 1996 Act requires that the "costs 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 [FCC]." 47 U.S.C. § 251(e)(2). To be "competitively neutral," the FCC requires that the LNP and number pooling cost allocation methodology (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." *Telephone Number Portability*, Third Report and Order, 13 FCCR 11701, ¶ 53 (1998) (LNP Third Report and Order). *See* Number Pooling Order, ¶ 199.

The FCC established a methodology for allocating shared industry costs[1] for both LNP and number pooling based on carriers' total intrastate, interstate, and international end-user telecommunications revenues for each region. LNP Third Report and Order, ¶ 105; Number Pooling Order, ¶¶ 193-94, 207. The FCC rejected a usage-based methodology because it would shift costs to those carriers winning more customers, i.e. the competitive local exchange carriers (CLECs), and could discourage the uploading and downloading of information to and from the databases. LNP Third Report and Order, ¶¶ 88, 89. Revenue-based allocation meets the competitive neutrality test because "it will cost carriers approximately the same increase in shared to costs to win a specific subscriber" and carriers' "share of the regional database costs will increase in proportion to their customer base." *Id.*, ¶¶ 106, 107.

[1] Shared costs are those costs incurred by the industry as a whole, such as costs to build, operate, and maintain the regional databases. LNP Third Report and Order, ¶ 69.

C. Bellsouth's Petition

On November 3, 2005, BellSouth filed a petition for rulemaking (Bellsouth Petition), seeking to change the cost allocation methodology for LNP and number pooling from revenue-based to usage-based. Under Bellsouth's proposal, the shared industry costs incurred to operate and manage each regional database would be distributed among service providers based upon each provider's actual use of the particular database serving the provider's region.

Bellsouth contends the current revenue-based cost allocation method is no longer competitively neutral as the 1996 Act requires. According to BellSouth, the FCC chose a revenue-based methodology in 1998 because of a lack of experience with LNP and number pooling, and their respective fiscal impacts on carriers. *Id.* at 11-14. Now, with some years of experience to evaluate, BellSouth asserts it is paying disproportionately too much of the shared costs and these expenses are "adversely affecting Bellsouth's ability to compete effectively in the marketplace." *Id.* at 28. At the same time wireless and voice over internet protocol (VOIP) providers port more numbers into their respective networks and shared industry costs rise accordingly, Bellsouth is porting fewer numbers into its network while its revenues remain "flat." *Id.* at 19-25, 29.

Addressing the FCC's concern that CLECs in a usage-based system would pay a disproportionate amount of costs, Bellsouth contends CLECs are "solidly established" in the local exchange market, and porting carriers are more likely to be wireless service providers anyway. *Id.* at 17. With regard to the FCC's concern that carriers might not upload and download information in order to avoid incurring database usage charges, Bellsouth argues that downloads do not have an associated cost. *Id.* at 18. However, Bellsouth fails to address the effect of the cost of uploads.

Discussion:

We recommend that the CPUC make the following recommendations to the FCC:

• While staff are not particularly concerned about the methodology the FCC uses to assess LNP and/or number pooling costs, staff are concerned that a methodology change could result in carriers' passing through the shared costs to customers in the form of an end-user fee.

• In order to continue to foster full competition, the FCC should not allow any service provider to impose an end-user fee to recover shared LNP and number pooling costs, e.g., a fee for porting a customer's number.

• The FCC should also verify BellSouth's cost claims. Bellsouth makes financial claims and presents accompanying tables regarding the number of uploads in the southeast region, how many of those uploads involved wireless carriers, the total shared LNP and number pooling costs for the southeast region, Bellsouth's percentage use of the southeast region database, and Bellsouth's declining revenues. However, Bellsouth does not provide any documentary evidence to support these claims and figures. Before making a change to the shared cost allocation mechanism, the FCC should confirm that Bellsouth's information is correct.

Assigned staff: Helen Mickiewicz, Legal Division (HMM, 3-1319)
Laura Gasser, Legal Division (LGX, 3-2169)

Cherrie Conner, Telecommunications Division (CHR, 3-2767)
Michaela Pangilinan, Telecommunications Division (WOW, 3-5953)

cc: Lionel Wilson
Jack Leutza

LGX/cdl