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

In the Matter of	)	
	)	CC Docket No. 99-35
Long-Term Number Portability	)	
Tariff Filings	)	
	)	
U S WEST Communications, Inc.	)	Transmittal Nos. 965, 975, 1002
	)	

MEMORANDUM OPINION AND ORDER

Adopted: July 9, 1999 **Released: July 16, 1999**

By the Commission: Commissioner Furchtgott-Roth dissenting, and issuing a statement.

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I. INTRODUCTION

1. In this Memorandum Opinion and Order, we conclude our investigation of the long-term number portability tariff transmittals filed by U S WEST Communications, Inc. (U S WEST).[1] The transmittals establish rates, terms and conditions for U S WEST's provision of long-term local number portability, including its end-user charge and query service rates. On February 9, 1999, the Competitive Pricing Division (Division) of the Common Carrier Bureau (Bureau) suspended U S WEST Transmittal No. 965 for one day, ordered U S WEST to keep accurate accounting of all amounts received that are associated with its number portability rates, and initiated an investigation into the lawfulness of the tariff.[2] On March 22, 1999, the Division also suspended Transmittal No. 975 for one day, ordered U S WEST to keep accurate accounts of all amounts received, and initiated an investigation into the lawfulness of this tariff.[3] On March 25, 1999, the Bureau designated specific issues for investigation, and established a pleading cycle.[4]

2. During the course of the Commission's five-month investigation, U S WEST's number portability tariff submissions were fully and thoroughly reviewed. Recognizing the complexity of the tariff submissions, the Commission's staff has analyzed all cost and revenue components of these tariffs to ensure that each meets the number portability cost recovery standard established by the Commission in the *Third Report and Order*[5] and the guidance provided by the Bureau in the *Cost Classification Order*.[6] The Commission's investigation involved a careful and expert review of the entire record of this proceeding, including the

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1 *See* U S WEST Long-Term Number Portability Transmittal Nos. 965 and 975, filed on January 26, 1999 and March 9, 1999, with effective dates of February 10, 1999, and March 24, 1999, respectively.

2 *In the Matter of Long-Term Number Portability Tariff Filings*, CC Docket No. 99-35, Memorandum Opinion and Order, DA 99-306 (Com. Car. Bur. rel. Feb. 9, 1999) (*Suspension Order*).

3 *In the Matter of Long-Term Number Portability Tariff Filings*, CC Docket No. 99-35, Memorandum Opinion and Order, DA 99-560 (Com. Car. Bur. Mar. 22, 1999) (*Second Suspension Order*).

4 *In the Matter of Long-Term Number Portability Tariff Filings*, CC Docket No. 99-35, Order Designating Issues for Investigation, DA 99-561(Com. Car. Bur. Mar. 25, 1999) (*Designation Order*). The pleading cycle required Direct Cases, Oppositions and Comments, and Rebuttals to be filed on April 23, 1999, May 3, 1999, and May 17, 1999, respectively. On April 12, 1999, the Commission issued *Public Notice*, DA 99-697, extending the Direct Case filing date to April 26, 1999.

5 *In the Matter of Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11,701 (1998) (*Third Report and Order*).

6 *See In the Matter of Telephone Number Portability Cost Classification Proceeding*, Memorandum Opinion and Order, 13 FCC Rcd 24,495, 24,505, para. 22 (1998) (*Cost Classification Order*).

pleadings filed by U S WEST and parties in opposition. Commission staff also responded to requests for *ex parte* discussions on the record, both with U S WEST and other interested parties, aimed at fully understanding and addressing all issues designated in the investigation. Finally, Commission investigators from the Bureau's Accounting Safeguards Division conducted a field examination of U S WEST's number portability claims to determine whether U S WEST's tariff filing included only costs allowed under the provisions of the *Third Report and Order* and the *Cost Classification Order*.[7]

3. For the reasons discussed below and based on the record before us, we find that we are unable to conclude that certain costs claimed in the initial tariff Transmittal Nos. 965 and 975 submitted by U S WEST are reasonable or lawful. Therefore, we find that the rates established in Transmittal Nos. 965 and 975 are unreasonable. We find, however, that the rates U S WEST has established in revisions to its original tariff transmittals are just and reasonable and, therefore, lawful. We conclude that the revised rates established in U S WEST Transmittal No. 1002 are the reasonable rates that should have been in effect from the effective date of U S WEST's original number portability tariff transmittal.[8] We therefore direct U S WEST to refund to its customers, with interest, the difference between the revised rates reflected in Transmittal No. 1002 and the rates that took effect on February 9, 1999.

II. BACKGROUND

4. In the *Third Report and Order*,[9] implementing section 251(e)(2)[10] of the Communications Act of 1934, as amended,[11] the Commission provided guidelines for carrier recovery of costs related to providing long-term local number portability. Specifically, we divided the costs of number portability into three categories[12] and established that carrier-specific costs directly related to providing number portability could be recovered in two federal charges: (1) a monthly number portability charge recoverable from end-users; and (2) a number portability

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[7] *See* U S WEST Communications Long-Term Local Number Portability Tariff Investigation, Field Examination (May 17-21, 1999), Report of Findings (June 18, 1999).

[8] *See* U S WEST Long-Term Number Portability Transmittal No. 1002, filed July 2, 1999, with an effective date of July 9, 1999.

[9] *See generally Third Report and Order*, 13 FCC Rcd 11,701.

[10] 47 U.S.C. § 251(e)(2). Section 251(e)(2) provides in relevant part that the cost of providing number portability "shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."

[11] 47 U.S.C. §§ 151 *et seq*.

[12] Specifically, we found that costs could be categorized as: (1) shared costs; (2) carrier-specific costs directly related to providing number portability; and (3) carrier-specific costs not directly related to providing number portability. *Third Report and Order*, 13 FCC Rcd 11,738, para. 68.

query-service charge that applies to carriers on whose behalf a LEC performs queries.[13] In addition to providing the general framework for the recovery of long-term number portability costs, the Commission delegated authority to the Bureau to determine appropriate methods for apportioning joint costs[14] among portability and non-portability services, and to issue any order to provide guidance to carriers filing their tariffs.[15]

5. Pursuant to this authority, on December 14, 1998, the Bureau issued its *Cost Classification Order*.[16] Based on the Commission's determination that only those carrier-specific costs incurred directly for the provision of number portability services would be eligible for recovery through the federal cost recovery mechanism as a local number portability costs,[17] the Bureau established a two-part test for identifying eligible carrier-specific costs. The Bureau determined that these eligible costs were ones that: (1) would not have been incurred by the carrier "but for" the implementation of number portability; and (2) were incurred "for the provision of" number portability service.[18]

6. After reviewing the tariffs filed by U S WEST on January 26, 1999, and March 9, 1999, the Bureau determined that the tariffs raised issues of reasonableness, suspended them for one day and set them for investigation.[19] Thereafter, on March 25, 1999, the Bureau released an order designating issues for investigation.[20]

7. Specifically, the Bureau designated for investigation the issues of: (1) whether the overall level of costs and charges proposed in Transmittal No. 975 are reasonable, generally and in comparison to the number portability costs of other RBOC's and to the lower tariffs proposed initially by U S WEST's in Transmittal No. 965, whether U S WEST unlawfully included administrative and business costs in rates for its query services and whether it is reasonable to allow U S WEST to recover higher number portability implementation costs than those incurred and recovered by LECs with more modern networks; (2) whether U S WEST's use of its cost

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13 *Third Report and Order*, 13 FCC Rcd at 11,776, 11,778, paras. 142, 147.

14 *See Cost Classification Order*, 13 FCC Rcd 24,505, para. 22 (defining joint costs as incremental costs associated with new investments or expenses that directly support the provision of number portability functions and also support one or more non-number portability functions).

15 *Third Report and Order*, 13 FCC Rcd at 11,740, para. 75.

16 *Cost Classification Order*, 13 FCC Rcd 24,495 (1999).

17 *Third Report and Order*, 13 FCC Rcd at 11,740, para. 72.

18 *Cost Classification Order*, 13 FCC Rcd at 24,500, para. 10.

19 *See, generally, Second Suspension Order*, CC Docket No. 99-35, DA 99-560.

20 *See, generally, Designation Order,* CC Docket No. 99-35, DA 99-561.

model to estimate its signalling costs of number portability results in the inclusion of some costs for which recovery already is provided through other recovery mechanisms and, therefore, produces an inaccurate estimate of actual number portability costs; (3) whether the number portability tariffs include costs to adapt other Operations Support Systems (OSS) to number portability, in addition to the incremental OSS upgrades that are directly related to number portability and whether these OSS costs are reasonable; (4) whether U S WEST's recovery of miscellaneous costs, administrative and business fees results in recovery of a portion of general overhead costs as U S WEST's number portability charges and whether U S WEST's use of a 1.89 factor to adjust its estimated "forward looking incremental" query costs constitutes use of a general overhead factor; (5) whether U S WEST's method of allocating number portability costs between the end-user and query service charges is reasonable, and (6) what separations treatment and intrastate ratemaking treatment may have been or may be accorded to U S WEST's long-term number portability costs.

8. U S WEST filed its Direct Case in support of its tariffs on April 26, 1999. Oppositions to the Direct Case were filed on May 7, 1999, by AT&T, the Ad Hoc Telecommunications Users Committee ("Ad Hoc"), and the Cities of Albuquerque and Tucson (Albuquerque and Tucson). The Minnesota Department of Public Service (MNDPS) filed Comments on May 10, 1999. U S WEST filed its Rebuttal to Oppositions on May 17, 1999.

9. Recently, U S WEST filed revised transmittals to address concerns raised by the Commission during the course of the investigation.[21] On our own motion and pursuant to section 204(a) of the Communications Act, as amended,[22] we suspended U S WEST Transmittal No. 1002 and included it in this investigation.[23] We find that U S WEST Transmittal No. 1002 raises the same issues that were set for investigation in the *Designation Order* and we therefore designate for investigation with respect to U S WEST Transmittal No. 1002 all issues set for investigation in the *Designation Order*.[24] Below, we address all issues raised in that order and by parties to this investigation in their pleadings.

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[21] *See* U S WEST Transmittal No. 1002.

[22] 47 U.S.C. § 204(a).

[23] *In the Matter of Long-Term Number Portability Tariff Filings*, CC Docket No. 99-35, Memorandum Opinion and Order, DA 99-1345 (Com. Car. Bur. July 8, 1999) (*Third Suspension Order*).

[24] *See Designation Order* at paras. 5-15, 20-22, 26-28, 31-33, 35-36.

III. LEVEL OF RATES AND CHARGES

A. Background

10. In the *Designation Order*, the Bureau noted that U S WEST's costs are higher than those of other regional Bell Operating Companies and that U S WEST still uses a large

number of analog switches.[25] The Bureau stated that U S WEST's tariff raises the issue of whether the substantial variances among LECs in the costs of implementing number portability actually reflect differences in the efficiency of their networks.[26] The Bureau stated that, if so, the higher costs incurred by LECs with less efficient networks may result from a failure on the part of those LECs to have performed general network upgrades for which recovery has been provided.[27] The Bureau noted that where a LEC has failed to upgrade its network, it may not be reasonable to allow recovery of a higher amount of number portability costs than the LEC would have incurred if the LEC had implemented number portability on an efficient, more modern network.[28] The Bureau stated that U S WEST's tariff raised the issue of whether its costs of implementing number portability are substantially higher than those of other LECs because its network is less efficient, and noted that it may not be reasonable to allow recovery of higher number portability costs than U S WEST would have recovered if it had implemented number portability on an efficient, more modern network.[29] The Bureau designated for investigation whether U S WEST's end-user and query services charges are reasonable.[30] The Bureau further designated for investigation whether it is reasonable to allow U S WEST to recover higher number portability implementation costs than those incurred by LECs with more modern networks.[31]

11. The Bureau also noted that U S WEST claimed significant costs for "service delivery," which U S WEST stated includes personnel training for negotiating, preparing, and correcting service orders for ported numbers, and for the hiring of additional personnel.[32] The Bureau directed U S WEST to explain the method it used for determining the costs of establishing and providing number portability, and to justify these costs.[33]

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[25] *Id.* at paras. 11-12.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.* at para. 14.

[30] *Id.*.

[31] *Id.*

[32] *Id.* at para. 11.

[33] *Id.* at paras. 11-14.

B. Direct Cases

12. U S WEST asserts that the Commission seems to assume that the costs of implementing number portability are necessarily higher for older or less modern equipment.[34] U S WEST asserts that its network is not less efficient than other, more modern networks.[35] U S WEST asserts that it uses a variety of switches in its network, and that the costs of its switch upgrades to implement number portability are 60% lower than the costs that would be incurred to purchase a digital switch.[36] U S WEST asserts that the fact it does not have the most modern software has no effect on its charges for number portability.[37] U S WEST contends that the relative technological state of its network simply is irrelevant to the costs it is entitled to recovery, as all carriers are entitled to all of their costs directly related to providing number portability.[38]

13. U S WEST asserts that it did not incorporate any incremental costs for land or buildings in the calculation of its end-user surcharges, but it did include certain costs for administration and maintenance.[39] In terms of administration costs, U S WEST asserts that it did not include any preexisting or embedded overhead, but only included incremental costs related to number portability.[40] U S WEST included certain costs for "service delivery," which it explains consists of "network planning, project management, translations, testing, non-job specific implementation, translations of switching and signaling networks, and the network portion of ported number order activity."[41] U S WEST states that these costs might be deemed administrative, including costs incurred for the development of materials and methods and procedures needed to train service representatives who will be handling number portability requests from carriers and end users, as well as the costs of actually conducting such training.[42] U S WEST asserts that it does not include any land, building, or administration costs in its query costs.[43] For service delivery costs, US WEST asserts that its 1998 costs were actual costs for

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[34] Direct Case at 19.

[35] *Id.* at 20.

[36] *Id.* at 19.

[37] *Id.* at 21.

[38] *Id.*

[39] *Id*. at 12.

[40] *Id*. at 13.

[41] *Id.*

[42] *Id.*

[43] *Id.* at 14.

training and staffing the centers in charge of number portability ordering, and that its costs for the years 1999-2004 were based on forecasted order volumes.[44] U S WEST asserts that these costs are for personnel-related functions but also include capital investments for computers.[45]

C. Oppositions

14. Albuquerque and Tucson assert that U S WEST's proposed monthly line charges and query charges are excessive on their face.[46] Albuquerque and Tucson contend that U S WEST is double recovering personnel costs, because the personnel costs claimed are already currently being recovered in existing rates and charges.[47] Albuquerque and Tucson assert that U S WEST is developing training materials for its co-carriers, whether they need it or not, which is an unnecessary cost.[48] Albuquerque and Tucson assert that U S WEST has loaded its query charge with business fees that include taxes, but such gross receipt taxes are typically only associated with end user, retail transactions.[49] Albuquerque and Tucson also state that U S WEST has miscalculated its income taxes.[50] AT&T also asserts that U S WEST has failed to justify its high rate.[51] AT&T asserts that U S WEST failed to address the *Designation Order*'s question of why U S WEST incurred costs that led to such a high tariff.[52] AT&T asserts that on a per-switch basis, U S WEST contends that it must spend more than 1.5 times what Bell Atlantic spent, with no apparent basis for this dramatic differential.[53]

15. MNDPS states that a portion of U S WEST's incremental number portability costs will jointly support non-number portability functions, but U S WEST fails to allocate such costs properly.[54] MNDPS asserts that U S WEST provided insufficient information to demonstrate that

44 *Id.* at 4.

45 *Id.* at 4.

46 Albuquerque and Tucson Opposition at 2-3.

47 *Id.* at Attachment: Declaration of Garth Ashpaugh at 2-3.

48 *Id.*

49 *Id.*

50 *Id.*

51 AT&T Opposition at 2-3.

52 *Id.*

53 *Id.*

54 MNDPS Opposition at 1.

it appropriately calculated its incremental costs of switching and signalling.[55] MNDPS states that the Minnesota Public Utilities Commission reviewed U S WEST's processes for handling orders from competitive LECs, and concluded that U S WEST should not be allowed recovery of any costs of developing competitive LEC interfaces because it had not demonstrated that its interfaces provide non-discriminatory access.[56] MNDPS asserts that the process U S WEST has in place to handle orders from competitive LECs requires high levels of manual intervention and high personnel costs.[57] MNDPS states that, in all but a few cases, orders are completely retyped for entry into U S WEST's legacy systems, and this process increases the risk of error, slows the processing of orders, results in discriminatory access, and raises the costs of serving customers.[58] MNDPS contends that U S WEST's anti-competitive behavior increases the cost of order processing, and the Commission should reject U S WEST's attempts to recover the costs of its anti-competitive behavior from its end users.[59] MNDPS also asserts that U S WEST failed to demonstrate that its service delivery costs comply with the *Cost Classification Order*.[60] MNDPS contends that U S WEST currently has existing ordering processes in place for service orders, but U S WEST has not differentiated between existing ordering processes and processes solely for number portability.[61] MNDPS asserts that U S WEST has failed to demonstrate that some of these costs are not currently being recovered from existing intrastate charges.[62]

D. Rebuttals

16. U S WEST contends that neither the Communications Act nor Commission rules require a LEC to explain why its rates differ from the rates of another LEC providing service under different circumstances in a different geographic area.[63] U S WEST asserts that its number portability end-user charges compare favorably to the end-user rates filed by other large LECs, and that it is Bell Atlantic's low surcharge that is the outlier.[64] U S WEST admits that its rates are

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55 *Id.* at 1-2.

56 *Id.* at 2.

57 *Id.*

58 *Id.*

59 *Id.* at 3.

60 *Id.*

61 *Id.* at 3-4.

62 *Id.*

63 Rebuttal at 4.

64 *Id.*

higher than those of other companies, and asserts that the main difference in the rates is the disparity in demand between companies.[65] U S WEST contends that the wide variety in query demand is in part the result of how companies determine whether calls should be queried.[66] U S WEST asserts that it only queries calls to portable NXXs that have had at least one number ported to another provider, in contrast to other carriers that query all calls, regardless of whether a number has been ported.[67] U S WEST asserts that companies serving more densely populated areas have more NXXs and more lines per switch, which results in more queries per unit of switch investment.[68]

17. U S WEST also asserts that network architecture and equipment procurement decisions and other cost factors have resulted in differences in costs and rates between companies.[69] U S WEST asserts that it used four SCP pairs to support number portability queries, while other carriers deployed the necessary functionality in a single STP.[70] U S WEST opines that these factors resulted in its spending more on SS7 links, necessary to tie the four SCPs together, than companies using a single STP.[71] U S WEST asserts that nowhere does the *Cost Classification Order* state that LECs must have digital networks, or that only certain switches are to be considered in calculating number portability costs.[72]

18. U S WEST asserts that it incorrectly used the term "network maintenance" in its Direct Case, and instead should have used the term "network operating expense."[73] U S WEST states that "network operating expense" includes costs of network planning, project management, translations, testing, non-job-specific implementation coordination, translations of switching and signalling networks, and the network portion of ported number order activity.[74] U S WEST asserts that its network maintenance costs were incurred solely for the provision of number

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65 *Id.*

66 *Id.* at 5.

67 *Id.*

68 *Id.* at 6.

69 *Id.*

70 *Id.*

71 *Id.*

72 *Id.* at 8.

73 *Id.* at 18-19.

74 *Id.*

portability.[75] U S WEST also disputes MNDPS's claim that its costs are high due to inefficiencies in its order processing systems.[76]

E. Discussion

19. As stated in the *Designation Order*, we are concerned that U S WEST's costs of implementing number portability are substantially higher than those of other carriers because it may not have performed general network upgrades on an ongoing basis, and its network is, accordingly, less up-to-date than that of other LECs.[77] Here, we agree with AT&T that U S WEST has failed to justify its high rate.[78] The expenditures claimed in U S WEST's Direct Case do not appear to support its high costs for upgrading its claimed network investments.[79] Based on questions raised during the course of our investigation, and *ex parte* communications on the record, U S WEST revised its tariff and substantially reduced its rates by stating that it will replace its analog switches, many of which are older, and will not seek to recover analog-related costs, as discussed above. By doing so, U S WEST has addressed our concerns about high costs resulting from its particular network.

20. U S WEST includes a large cost on its Chart 1 of "service delivery costs" which it lists under the categories of capital and expense.[80] In its Direct Case, U S WEST asserts that this cost involves "network planning, project management, translations, testing, non-job specific implementation, translations of switching and signaling networks, and the network portion of ported number order activity," in addition to network maintenance that is attributable to hardware failures.[81] Over a sixty-month period, U S WEST estimates that an average of 192 employees will perform the described functions for the provision of local number portability at a high overall cost.

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[75] *Id.* at 30-31.

[76] *Id.*

[77] *Designation Order* at para. 12.

[78] AT&T Opposition at 2-3.

[79] The Commission has authority to examine and adjust a common carrier's rates to ensure that they meet the Communications Act's mandate that all common carrier charges, practices, classifications and regulations shall be just and reasonable. *See* 47 U.S.C. § 201(b); *see also* Amendment of Part 65 of the Commission's Rules to Prescribe Components of the Rate Base and Net Income of Dominant Carriers, *Report and Order*, 3 FCC Rcd 269 (1987); *American Telephone and Telegraph Co.*, Phase II Final Decision and Order, 64 FCC 2d 1 (1977), *recon. in part*, 67 F.C.C. 2d 1429 (1979); *In re Applications of Pacific Bell, Order and Authorization*, Order and Authorization, 10 FCC Rcd 12,448 (1995).

[80] Direct Case at Chart 1.

[81] Rebuttal at 18-19.

In addition, U S WEST indicates that service delivery costs for 1999 through January 2004 are based on forecasted order volumes.

21. Based on our examination of U S WEST's service delivery cost justification, we agree with MNDPS that U S WEST fails to sufficiently demonstrate that these costs are, in fact, incremental to the provision of local number portability and are in compliance with the *Cost Classification Order*'s two-part test.[82] We recognize that some administrative and personnel-type costs will be incurred to provision number portability. However, we question U S WEST's high overall costs for service delivery, which represent a significant portion of its total end-user surcharge expense. Based on our review of the data submitted, we conclude that U S WEST has not met its burden of proving that its service delivery costs would not have been incurred but for the provision of number portability. We cannot find these costs to be reasonable. U S WEST has not adequately explained its need for a large number of personnel to be employed at high averaged salaries. Additionally, U S WEST has not met its burden in explaining why it presents such large, unexplained variations in the level of its actual and forecasted costs.

22. However, in a subsequent tariff filing, including *ex parte* communications on the record, U S WEST addressed our concerns and reduced this cost to a more reasonable level.[83] Specifically, U S WEST recalculated its estimated service delivery costs to correct transcription errors, reduced its applicable capital expenditures, reduced the number of personnel included in this cost, and reduced its costs based on revised general purchase contracts.[84] For example, U S WEST has reduced its forecasts of the number of persons required to perform service delivery over the five-year period. Because U S WEST addressed our concerns regarding its service delivery cost, we allow it to recover the amount of service delivery costs listed in its revised tariff filing.

IV. SIGNALLING AND SWITCHING COSTS

A. Background

23. In the *Third Report and Order*, the Commission limited the costs eligible for recovery through the new federal number portability cost recovery mechanism to "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 to another."[85] In the *Cost Classification Order*, the Bureau concluded that costs not directly related to number portability have become

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[82] *See* Direct Case, Workpaper 6.

[83] U S WEST Transmittal No. 1002.

[84] *See Ex Parte* Letter from Sue Pawlik, U S WEST, to Kris Monteith and Chris Barnekov, FCC (July 1, 1999).

[85] *Third Report and Order*, 13 FCC Rcd at 11,740, para 72.

ordinary costs of doing business in this new environment, and, thus, represent general network upgrades.[86] The Bureau held that LECs must distinguish the costs of providing local number portability itself, recoverable through the federal charges provided in the *Third Report and Order*, from general network upgrade costs recoverable through the price caps and rate-of-return mechanisms.[87] The Bureau noted that allowing embedded investments to be recovered through the federal number portability cost recovery mechanism would amount to recovery of costs the LECs already recover through standard recovery mechanisms.[88] The Bureau also specified that only new costs may be recovered, as costs incurred prior to number portability implementation were already subject to recovery through standard mechanisms.[89] The Bureau noted that, in the past, the use of computer cost models has generated significant controversy.[90] The Bureau required LECs to disclose computer-cost models on the record, if they use such models to justify rates.[91] The burden rests on the incumbent LEC to explain fully all of the inputs, algorithms and assumptions of its computer-cost model.[92]

24. In the *Designation Order*, the Bureau noted that its preliminary review of U S WEST's cost model, which U S WEST used to estimate query charges, suggested that its cost model result may include costs for which recovery already is provided through other recovery mechanisms.[93] The Bureau designated for investigation whether U S WEST's use of a cost model to estimate its signalling costs of number portability results in the inclusion of previously-recovered costs, and directed U S WEST to file actual expenditures within the recovery period, and to explain the basis of each calculation.[94] The Bureau further directed U S WEST to explain how the use of a cost model would produce more accurate estimates of the incremental costs of number portability than would actual expenditures.[95] The Bureau also

86 *Cost Classification Order*, 13 FCC Rcd at 24,503, para. 18.

87 *Id.*

88 *Id.*

89 *Id.*

90 *Id.* at 24,504-05, para. 56.

91 *Id.*

92 *Id.*

93 *Designation Order* at paras. 7-8.

94 *Id.*

95 *Id.* at paras. 7-9.

directed U S WEST to demonstrate its total network switching and signalling costs with and without long-term number portability.[96]

25. The Bureau's review of U S WEST's filing also revealed that U S WEST deployed number portability through the use of four pairs of service control points (SCPs) for number portability to enable its STPs to support number portability.[97] U S WEST also purchased a fifth SCP pair for use with a Message Relay Point.[98] Although U S WEST argued that Message Relay Point supports query routing associated with number portability, this service also supports other Custom Local Area Switching Services (CLASS). The Bureau noted that the costs of the fifth SCP, therefore, may not qualify as an eligible number portability cost, and directed U S WEST to justify this cost.[99]

B. Direct Cases

26. In its Direct Case, U S WEST asserts that its costs were developed "based on actual costs incurred to implement" number portability.[100] U S WEST asserts that its SCP, SCP links, STP, STP links, and Service Switching Points (SSPs), including end office and tandem switches, were actual costs, or forecasted costs based on actual costs.[101]

27. U S WEST asserts that it uses a variety of switches in its network, including both analog and digital switches.[102] U S WEST contends that its costs of upgrading its 1AESS switches, which are not state of the art, are less than or equal to the cost to upgrade many of its digital switches.[103] For its queries, U S WEST asserts that its costs were based largely on actual costs, but it used an SS7 cost model to develop costs associated with STPs and SS7 links.[104] U S WEST asserts that its cost model did not result in double recovery of costs, but that it

[96] *Id.*

[97] *Id.* at paras. 5-6.

[98] *Id.*

[99] *Id.*

[100] Direct Case at 3.

[101] *Id.* at 4.

[102] *Id*. at 19.

[103] *Id.*

[104] *Id.* at 5.

recalculated its query costs using actual and planned costs with and without use of its model.[105] U S WEST asserts that in using its SS7 model, it converted total investments to annual per-unit number portability query investments.[106]

28. U S WEST asserts that it purchased a fifth SCP pair solely to act as a Message Relay Point (MRP) for number portability purposes.[107] U S WEST asserts that the MRP was created for the specific purpose of ensuring that certain previously-existing services continue to be routed properly and to function as designed for end users whose numbers have been ported.[108] U S WEST states that these services include LIDB Alternative Billing Service, Calling Name inquiries, certain CLASS services, and Interswitch Voice Messaging Service.[109] U S WEST asserts that an MRP is essential for routing queries in a number portability environment if a competitive local exchange carrier is to have the ability to provide all line-based services and the freedom to store its line-based information in whatever LIDB it chooses.[110] U S WEST asserts that the MRP does not provide any new capacity for CLASS or other services, and its costs are directly related to the provision of number portability.[111] U S WEST asserts that the more efficient approach to routing queries over U S WEST's existing signalling network is to route all queries associated with number portability-capacity NXXs through a single regional SCP pair rather than to multiple STPs.[112] U S WEST believes that adding the additional capacity to these STPs would have been about 10 times more costly than purchasing another SCP pair and would have taken up to three years to implement.[113]

C. Oppositions

29. Albuquerque and Tucson assert that U S WEST's proposed monthly line charges and query charges are excessive on their face.[114] Albuquerque and Tucson assert that these

105 *Id.* at 11-12.

106 *Id*. at 5.

107 *Id.* at 7-8.

108 *Id.*

109 *Id*. at 8.

110 *Id*. at 8-9.

111 *Id.*

112 *Id.*

113 *Id.* at 10.

114 Albuquerque and Tucson Opposition at 2-3.

excessive proposed rates appear to be due to two facts: (1) U S WEST's inclusion of costs other than new, incremental costs; and (2) U S WEST's lack of investment in advanced central office equipment.[115] Albuquerque and Tucson assert that ratepayers should not be required to bear the burden imposed by U S WEST management's historic short-changing of switch investment.[116] Albuquerque and Tucson also assert that U S WEST has failed to show that it is not double-recovering its costs.[117]

30. AT&T asserts that on a per-switch basis, U S WEST contends that it must spend more than 1.5 times what Bell Atlantic spent, with no apparent basis for this dramatic differential.[118] AT&T asserts that U S WEST's inclusion of its costs associated with a fifth SCP pair does not comply with the Commission's requirements.[119] AT&T asserts that according to U S WEST's description of this pair's use, the investments and associated expenses potentially satisfy the "but for" criterion but do not satisfy the "for the provision of" criterion for cost recovery.[120] AT&T asserts that merely utilizing a SCP pair to ensure that other services work correctly in a number portability environment is not permitted.[121] Additionally, AT&T disputes U S WEST's assertion that this SCP pair is needed to ensure quality, reliability, or convenience.[122]

31. AT&T asserts that U S WEST seeks to recover substantial costs for what appears to be upgrading customer lines now provisioned in 1AESS switches onto digital switches.[123] AT&T contends that the 1AESS switch is older technology that could have been part of a standard upgrade paid for out of U S WEST's existing rate base.[124] AT&T asserts that the *Cost Classification Order* prohibits carriers from recovering costs to implement number portability through obsolete equipment.[125]

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115 *Id.*

116 *Id.*

117 *Id.*

118 AT&T Opposition at 2-3.

119 *Id.* at 13.

120 *Id.* at 13-14.

121 *Id.*

122 *Id.* at 14.

123 *Id.* at 5.

124 *Id.*

125 *Id.*

32. MNDPS asserts that a portion of U S WEST's incremental number portability costs will jointly support non-number portability functions, but U S WEST fails to allocate such costs properly.[126] MNDPS asserts that U S WEST provided insufficient information to demonstrate that it appropriately calculated its incremental costs of switching and signalling.[127]

D. Rebuttals

33. In rebuttal, U S WEST asserts that its opponents' reading of the Commission's two-part cost recovery test is implausibly narrow.[128] U S WEST contends that the *Cost Classification Order* does not specify that only certain switches are eligible for number portability cost recovery.[129] U S WEST asserts that it should recover its MRP costs because MRP functionality is needed to route queries in a number portability environment.[130] U S WEST asserts that it would not be able to complete calls to or from ported numbers without MRP.[131] U S WEST continues to assert that it purchased its fifth SCP pair solely to act as a MRP for number portability purposes, which is required by the Illinois Commerce Commission number portability standards.[132] U S WEST asserts that this MRP, that is, the fifth SCP pair, was specifically created to ensure that queries are routed properly in a number portability environment.[133]

E. Discussion

34. As a preliminary matter, we note that despite the fact that LECs have the ability to track actual expenditures to calculate their number portability rates, U S WEST initially used a cost model to estimate its query service costs. Although we do not question the soundness of models for other purposes, we find that it was not reasonable to use them here. We conclude that the cost estimates produced by the cost models U S WEST has presented do not comport with the special cost requirements we have adopted for this proceeding because they do not report only those new, incremental costs of providing number portability incurred during the cost recovery period. For example, the models assume that no favorable increase in capacity utilization is

126 MNDPS Opposition at 1.

127 *Id.* at 1-2.

128 Rebuttal at 1-2.

129 *Id.* at 8.

130 *Id.* at 3.

131 *Id.*

132 *Id*. at 19.

133 *Id.*

caused by the addition of number portability. Further, the models result in inflated estimates of the eligible costs because they include disallowed costs, inflated capacity estimates and unreasonable investment assumptions. Additionally, as noted above, LECs have the ability to track actual expenditures using methods other than the cost models. We therefore disallow their use in this tariff investigation.

35. U S WEST also alleges that it used its own cost model to develop its query charges, but then also developed actual expenditures, listed in Attachment 1 of its Direct Case.[134] As discussed above, we disallow U S WEST's costs based on a cost model because they include disallowed costs, inflated capacity estimates and unreasonable investment assumptions. We will allow U S WEST's actual expenses listed in its Attachment 1 and referenced in its Workpaper 5. Additionally, as discussed below, we disallow the cost factors added to these actual expenditures for query services. U S WEST may only recover the actual expenses listed in Attachment 1 of its Direct Case for query services.

36. In its original filing, U S WEST included a fifth SCP pair for use with MRP.[135] We reject U S WEST's assertion that it be allowed to recover the costs of its fifth SCP pair to number portability because this pair is "used for MRP functions, which are necessary in order to port numbers without impairment of 'quality, reliability, or convenience.'"[136] The Commission and the Bureau have previously considered and rejected the argument that all costs allegedly incurred to prevent any degradation of service, however insignificant, are eligible number portability costs. In the *Cost Classification Order*, the Bureau reiterated the Commission's earlier finding that certain costs cannot be claimed simply because carriers claim they are necessary to avoid an impairment in quality, reliability, or convenience.[137] The Bureau reiterated the Commission's earlier view of the *Third Report and Order* that degradation of service was one of several factors considered by the industry and the Commission in selecting an LRN-based method of number portability.[138] However, this performance criterion is not authority for the proposition that all costs incidental to achieving that performance level are eligible costs.[139] We therefore reject U S WEST's argument.

37. US WEST also alleges that the MRP "was created for the specific purpose of ensuring that certain previously-existing services continue to be routed properly and to function as designed for end users whose numbers have been ported. . . includ[ing] LIDB . . . Calling Name

134 Direct Case at Attachment 1, pages 1-3.

135 *Designation Order* at paras. 5-6.

136 Direct Case at 17-18.

137 *Cost Classification Order*, 13 FCC Rcd at 24,501-02, para. 13.

138 *Id.*

139 *Id.*

inquiries, certain CLASS services, and Interswitch Voice Messaging Service."[140] In the *Cost Classification Order*, the Bureau stated that "costs related to any changes made necessary as a consequence of" number portability were not costs that met our two-part cost recovery test.[141] The Bureau interpreted the Commission's narrow definition of eligible costs to include only those costs directly related to the provision of number portability, not "incidental" costs.[142] Because U S WEST has only proven that this SCP pair was an "incidental" cost, not a direct, new cost incurred for the provision of number portability, we find that it does not meet the cost recovery standard of the *Third Report and Order* and the *Cost Classification Order* and, for this reason, is unjust and unreasonable.

38. Based on questions raised during the course of our investigation and *ex parte* communications on the record, U S WEST amended its Direct Case and removed its fifth SCP pair from its tariff.[143] By doing so, U S WEST has addressed our concerns.

39. We also agree with AT&T that U S WEST seeks to recover substantial costs for a 1AESS switch that is older technology and that could have been part of a standard upgrade paid for out of U S WEST's existing rate base.[144] U S WEST has not met its legal burden of proving that the purchase of this switch is a new cost that would not have been incurred but for the provision of number portability, or that it should be allocated completely to number portability. Thus, the expenditures claimed for the 1AESS switch in U S WEST's Attachment 6 do not appear to be reasonable or permissible under the *Third Report and Order* and *Cost Classification Order*.[145]

40. Based on questions raised during the course of our investigation and *ex parte* communications on the record, U S WEST amended its Direct Case and stated that it will upgrade all existing switches with digital switches, and will not seek recovery of 1AESS switch costs.[146] By doing so, U S WEST has addressed our concerns about its potentially higher costs due to its particular network efficiencies. Additionally, U S WEST has met its legal burden by filing actual expenditures for new switches that would not have been incurred but for the

140 Direct Case at 8.

141 *Cost Classification Order*, 13 FCC Rcd at 24,501, para. 12.

142 *Id.*

143 U S WEST Transmittal No.1002.

144 AT&T Opposition at 5.

145 Direct Case, Attachment 6.

146 *See Ex Parte* Letter from B. William Johnston, U S WEST, to Judy Nitsche, FCC (June 4, 1999).

provision of number portability.[147] Because U S WEST addressed our concerns and met its legal burden by requesting recovery only for those new switching costs that meet the narrow cost recovery test defined in the *Third Report and Order* and *Cost Classification Order*, we allow the switching costs claimed in its revised tariff to be recovered.

V. OPERATIONS SUPPORT SYSTEMS

A. Background

41. In the *Third Report and Order,* the Commission established a general cost recovery standard and defined eligible number portability costs as the "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 to another."[148] In defining eligible number portability costs, the Commission specifically rejected the carriers' arguments that eligible number portability costs include the "costs that carriers incur as an incidental consequence of number portability."[149] With regard to OSS costs, the Commission concluded that "only a portion of the joint costs of OSS are carrier-specific costs directly related to number portability."[150] This conclusion was based on the Commission's recognition that modifications to OSS systems may provide a wide range of services and features that are not related to the provision of number portability.[151] The Commission also noted that the costs for these services are recoverable by the LECs in their rates for other services.[152]

42. In the *Cost Classification Order*, the Bureau provided the incumbent LECs with guidance on how to identify eligible number portability costs.[153] Using the Commission's general cost recovery standard, the Bureau determined that only the incremental portion of the costs of modifications to the OSS systems related to number portability functions is eligible for cost recovery through the number portability end-user and query service charges.[154] The Bureau further concluded that the incremental portion of the joint costs of OSS modifications is only that portion that represents the difference between the costs of the modifications to OSS systems

[147] *See* U S WEST Transmittal No. 1002.

[148] *Third Report and Order*, 13 FCC Rcd at 11,740, para. 72.

[149] *Id.*

[150] *Id.*

[151] *Id.* at 11,740, para. 74.

[152] *Id.* at 11,740, paras. 73-74.

[153] *Cost Classification Order*, 13 FCC Rcd 24,495.

[154] *Id.* at 24,506-07, para. 27.

without the number portability functionality and the total cost of the modifications with the number portability functionality.[155]

43. The Bureau also provided guidance to the incumbent LECs on the cost support information that must be filed with the local number portability tariffs. The Bureau directed the incumbent LECs to make a special showing to establish the eligibility of OSS modification costs where the modification is not dedicated solely to number portability *and* is not available without the number portability functionality, but otherwise meets the two-part eligibility test.[156] Specifically, the incumbent LECs should demonstrate that the sum of all avoided costs and incremental revenues associated with the OSS system does not cover the costs of the upgrade or modification that was made for number portability.[157] The Bureau concluded that eligible number portability costs for OSS modifications should not exceed the remainder of the costs after subtracting all avoided costs and incremental revenues.[158]

44. With regard to advancement costs,[159] the Bureau further concluded that the incumbent LECs may claim only the "advancement" costs associated with the difference between the costs of OSS upgrades with the number portability functionality and the costs without the functionality.[160] The Bureau directed the incumbent LECs to provide evidence demonstrating that the replacement or "advancement" is actually due to number portability and would not have occurred otherwise.[161]

45. In the *Suspension Order*, the Bureau designated for investigation the issue of whether U S WEST's OSS costs are warranted.[162] The Bureau also designated for investigation the issue of whether U S WEST's number portability tariff includes costs U S WEST incurred to adapt other OSS systems to number portability, in addition to the incremental portion of OSS upgrades that are directly related to number portability, and whether the OSS costs U S WEST claims in its number portability tariff are reasonable. In particular, the Bureau directed U S

155 *Id.*

156 *Id.* at 24,507, para. 29 (emphasis added).

157 *Id.*

158 *Id.*

159 *Id.* at 24,506-07, n.70 (advancement costs are primarily those costs arising from the cost of money or the time value of money that have been incurred for the deployment of upgrades or modifications to the network at an accelerated pace or earlier date than provided for in the LEC's original plans).

160 *Id.* at 24,508, para. 30.

161 *Id.*

162 *Suspension Order* at para. 4.

WEST to file as part of its Direct Case an itemized list of OSS costs, arranged by functional area (for example, provisioning, maintenance, repair, billing, etc.). For each OSS modification or augmentation, U S WEST must provide: (1) the total cost; (2) the cost assigned to number portability; (3) the cost allocations among number portability services; (4) an explanation of how each OSS modification relates to performing queries; (5) an explanation of how each OSS modification relates to porting numbers between carriers; (6) an explanation of how each OSS modification relates to any other number portability function; (7) the basis for cost allocations between number portability and non-number portability services; and (8) the basis for cost allocations among number portability services. For functions other than provisioning of number portability, the Bureau directed U S WEST to explain with specificity why a particular OSS modification or upgrade qualifies as eligible under the *Cost Classification Order*.

46. The Bureau also directed U S WEST to explain for each OSS modification the manner in which it alters the nature of the task or function previously performed, and why this alteration is necessary "for the provision of portability." In addition, the Bureau directed U S WEST to identify the OSS costs that are related to revising OSS systems to perform 10-digit translations and to demonstrate that these costs will not benefit CLASS services, area code overlays, or other services. In the alternative, the Bureau directed U S WEST to show how costs were allocated among services that benefit from the changes.

B. Direct Case

47. In its direct case, U S WEST included Attachment 5, which contains a list of the OSS costs arranged by functional area.[163] Attachment 5 lists 71 modifications to OSS-related systems, 50 of which U S WEST has included in its rates. U S WEST contends that the costs of the other 21 modifications should also be recovered but were excluded because of the narrow definition of eligible number portability costs provided in the *Cost Classification Order*.[164] U S WEST also included the total cost of each OSS modification, and the cost assigned to number portability for each modification.[165] U S WEST states that the application of the criteria stated in the *Cost Classification Order* resulted in the exclusion of all costs for repair, billing, and report systems, except query and surcharge billing.[166] U S WEST also states that the functions that were included in its rates meet one or more of the following criteria: (1) the system is required to set up transmission of data or transmits data to the NPAC; (2) the system is required to provision

[163] Direct Case at 23, Attachment 5.

[164] *Id.*

[165] *Id.*

[166] *Id*. at 24.

number portability service to the network element; or (3) the system is required so that call processing for a ported number will work.[167]

48. With regard to the allocation of OSS costs among services, U S WEST allocated the entire cost of OSS modifications to number portability service. U S WEST contends that the costs generally break down into three categories: (1) personnel time for software development; (2) license fees; and (3) maintenance.[168] The OSS costs identified in Attachment 5 include annual maintenance costs equal to 15% of the total costs of development of the software and modification costs incurred for OSS applications.

C. Oppositions

49. Ad Hoc argues that U S WEST seeks to recover OSS costs that the Commission has determined are not eligible for recovery through tariffed number portability charges.[169] Ad Hoc contends that the 30 OSS systems included on Ad Hoc's Workpaper 3 should be excluded from recovery.[170] Ad Hoc also contends that these systems fall into the category of adaptations made necessary by the implementation of number portability or adaptations made necessary by U S WEST's decision to bill number portability query charges and end-user charges rather than to absorb the costs.[171] According to Ad Hoc, U S WEST's explanation of its OSS applications does not provide the information requested by the Commission and merely repeats what was stated in U S WEST's initial transmittal.[172]

50. Albuquerque and Tucson filed an opposition stating that U S WEST erred in calculating its maintenance costs at 15% of the costs incurred for the development and modification of OSS.[173] Albuquerque and Tucson claim that the 15% maintenance cost is not the standard rate nor is it supported specifically in the case of number portability and constitutes double recovery of maintenance personnel/labor since these charges are already being recovered in existing rates and charges.[174]

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[167] *Id.* at 23-24.

[168] *Id.* at 25.

[169] Ad Hoc Opposition at 12.

[170] *Id.* at 12, Workpaper 3.

[171] *Id.* at 12.

[172] *Id.* at 12-13.

[173] Albuquerque and Tucson Opposition, Attachment at 2.

[174] *Id.*

51. In its opposition, AT&T argues that U S WEST should not be allowed to recover costs for OSS systems that enable call processing for ported numbers.[175] AT&T also argues that U S WEST's maintenance costs are invalid because U S WEST has not provided evidence to show that it will incur any additional maintenance expenses as a result of number portability.[176]

52. The MNDPS argues that the cost of U S WEST's OSS modifications are high as a result of the inefficiencies of U S WEST's OSS interfaces that make necessary excessive levels of manual processing of orders and intervention to resolve problems.[177] The MNDPS also states that because of U S WEST's anti-competitive behavior in failing to provide nondiscriminatory access to OSS systems, the Commission should deny U S WEST's recovery of costs incurred in upgrading its OSS systems.[178] The MNDPS argues that U S WEST must also demonstrate that the costs of service order negotiation are not already recovered in its intrastate non-recurring and recurring charges.[179]

D. Rebuttal

53. U S WEST denies the MNDPS's claim that it has engaged in anti-competitive behavior that results in higher costs for modifications to its OSS systems.[180] U S WEST argues that the MNDPS has confused the unbundled network elements requirements with the number portability requirements.[181] U S WEST also disputes that its service order delivery processes are problematic or that these processes differ significantly from those involved with other services.[182]

54. With regard to the 15% maintenance factor, U S WEST argues that this maintenance fee is a standard part of OSS contracts that is charged in addition to the price of the OSS software.[183] U S WEST states that its cost support identifies the portion of the maintenance fee that is attributable to the software feature and the portion that is attributable to hardware

175 AT&T Opposition at 8.

176 *Id*.

177 MNDPS Opposition at 2.

178 *Id.*

179 *Id*. at 4.

180 Rebuttal at 31 n.69.

181 *Id*.

182 *Id.* at 30-32.

183 *Id*. at 10.

maintenance.[184] U S WEST states that its OSS costs should be allowed because without these expenditures, customers with ported numbers cannot receive calls from the LEC network or any other network.[185]

E. Discussion

55. Our review of the record demonstrates that, in general, U S WEST has applied the Commission's cost recovery standards regarding its OSS modifications in an appropriate manner. U S WEST seeks to recover costs for modifications to several OSS in its number portability rates, however, that should be disallowed.

56. OSS systems consist of operational and administrative databases that store information regarding the location, status, and condition of physical equipment, as well as the operational processes that are designed to produce system reliability and service quality.[186] OSS systems also perform internal administrative functions, such as bookkeeping, accounting, and inventory. The data in OSS systems may be used by a LEC for marketing and planning purposes, as well as for customer service and care.[187] OSS administrative systems for maintenance and repair, billing, inventory control, surveillance and customer care appear to operate independent of the network functions related to the provision of voice and data services. These systems do not provide the telephone, voice, and data transmission services in the same way that switches, lines, and physical equipment function to provide service.

57. We recognize that to provide current network functions in combination with number portability functionalities, U S WEST was required to make substantial modifications to its OSS to make existing network architecture compatible with the new number portability components. We also recognize that the existing OSS for billing, maintenance, and repair required modification to allow them to accept the new number format, or location routing number (LRN), used by ported numbers. We agree with parties opposing U S WEST's Direct Case, however, that U S WEST has failed to demonstrate that some of its OSS modifications meet the second prong of the Commission's two-prong test; specifically, U S WEST has failed to show that the OSS changes were made "for the provision of number portability."[188] Stated alternatively, although U S WEST has sufficiently demonstrated that the implementation of number portability has prompted changes to many OSS systems, some costs it claims appear to have been made to modify OSS functions that are incidental to the provision of number portability service. Based on

184 *Id*. at 10.

185 *Id*. at 11.

186 Newton's Telecom Dictionary, 14th Ed., 548 (1998).

187 *Id*.

188 *See generally* Ad Hoc Opposition at 13; AT&T Opposition at 6-8.

the standard set out in the *Third Report and Order* and the *Cost Classification Order*, these costs constitute general network upgrades, which the LECs are assumed to recover through the ordinary price cap and rate of return mechanisms.[189]

58. Turning to U S WEST's OSS recovery claims, we note at the outset that in its initial tariff transmittals, U S WEST excluded from recovery through the number portability charges the costs of 21 of the 70 OSS modifications it claims it was required to make to implement number portability.[190] The exclusions were made by U S WEST based on its interpretation of the cost recovery standard the Bureau established in the *Cost Classification Order*. We find that U S WEST's exclusion of these costs was proper and reasonable under the *Third Report and Order* and the *Cost Classification Order,* because these modifications do not appear to be for the provision of number portability and fail to meet the standard the Bureau established for recovery of eligible number portability costs. We recognize that U S WEST made these exclusions pending resolution of its application for review of the *Cost Classification Order* regarding the definition of eligible number portability costs.[191] These costs are properly excluded, however, absent a ruling to the contrary on the application for review.

59. We also find, however, that still further OSS costs claimed in U S WEST's initial tariff filings appear to be unrelated to the provision of number portability as defined in both the *Third Report and Order* and the *Cost Classification Order*. Specifically, the costs incurred for the following OSS systems appear unrelated to the provisioning of number portability service: Other Deployment Expense for Service Order Administration/Local Service Management System (SOA/LSMS); Field Access System (FAS); Field Access Screening Tool (FAST); Code Talker; Letter of Authorization (LOA) Imaging; Customer Record Information System (CRIS) CR Surcharge Billing; and US WEST-provided maintenance costs. We agree with Ad Hoc and AT&T that these systems, as they are described in U S WEST's initial filing, do not appear to be involved in the actual porting or the querying of numbers.

60. U S WEST's descriptions of the FAS, FAST, and CRIS CR Surcharge Billing demonstrate that these systems provide repair, maintenance, and billing services for the

[189] *See infra* at paras. 1, 2. The descriptions of the OSS modifications in U S WEST's filing establish that many of these systems were in use prior to the date on which the Commission released the *First Report and Order* directing the LECs to provide telephone number portability, *see, e.g.,* Direct Case at Attachment 5, thus further supporting the assumption that U S WEST is recovering the costs of any modifications to these systems through the existing price caps and rate of return mechanisms. Those cost recovery mechanisms are separate and distinct from the cost recovery mechanism put in place for the recovery of the costs of implementing long-term number portability.

[190] Direct Case, Attachment 5 at 2-3, 9-12.

[191] *Id.* at ii.

network.[192] The descriptions U S WEST provides identify the systems as used to provide trouble reports for repair functions, and to issue bills to its customers. Costs incurred for general maintenance and repair are considered costs of general network upgrades. As stated in the *Cost Classification Order*, the costs of modifying OSS systems related to repair and maintenance are general network upgrades that are recovered through the LECs' price cap and rate-of-return recovery mechanisms.[193] Although U S WEST states that these systems are required for porting numbers, we disagree with U S WEST's representation. The *Cost Classification Order* considers the term "porting numbers" as referring only to systems that upload and download LRN information to and from the regional Number Portability Administration Centers (NPACs) and for transmitting porting orders between carriers.[194] We note the Bureau's interpretation of "porting numbers" as set out in the *Cost Classification Order* and reject U S WEST's attempt to recover the costs for modifications to these systems through the number portability charges.

61. We also find that the costs U S WEST seeks to recover in its initial tariff filings for modifications to the Code Talker, and LOA Imaging systems are not appropriate for recovery as eligible number portability costs because these systems do not provide provisioning, porting or querying functions for number portability service. U S WEST's explanations of these systems describe how they are used to provide customer account information and administrative support for the general network.[195]

62. We note that a substantial amount of U S WEST's OSS costs in its initial tariff filings relate to maintenance services for software developed by vendors and by U S WEST itself. Several parties have objected to the amount of maintenance costs U S WEST claims for OSS modifications, arguing that U S WEST's recovery for maintenance results in double recovery.[196] U S WEST maintains that 15% is a standard part of OSS contracts with outside vendors and that maintenance costs on software that U S WEST has built for itself also fall within the 15% range.[197] U S WEST also provided evidence that the 15% maintenance costs were for software, not hardware, maintenance and were dedicated solely to modifications for number portability.[198] Because these costs are dedicated to OSS software modifications for number portability, we find

[192] *Id.*, Attachment 5 at 6.

[193] *Cost Classification Order*, 13 FCC Rcd at 24,500-01, paras. 11-12.

[194] *Id.* at 24,502, para. 14.

[195] Direct Case at Attachment 5.

[196] Ad Hoc Opposition at Workpaper 3; AT&T Opposition at 8; Albuquerque and Tucson Opposition, Declaration of Garth T. Ashpaugh at 2.

[197] Rebuttal at 10.

[198] *Id.* at Attachment 1.

that they are distinguishable from the maintenance costs that the *Cost Classification Order* precludes LECs from recovering through the number portability charges. Further, the opposing parties did not provide evidence to refute U S WEST's claim that it is industry practice to include 15% maintenance fee in contracts for OSS software modifications. Therefore, we find that the recovery of these costs for software provided by vendors is reasonable.

63. We agree with AT&T's argument that U S WEST has not presented evidence in the cost support in its original filing to demonstrate that its maintenance costs equal 15% of the total costs of the OSS software developed by U S WEST.[199] Without such evidence, we have no basis to conclude that the costs presented in the original filing are reasonable. We note that in its revised tariff filing, U S WEST reduced the amount of cost recovery for maintenance to OSS systems to 11% annually of the total cost of the modifications. This reduction, in effect, reduces the amount U S WEST claims for its internally-produced OSS modifications to approximately 3% annually. U S WEST also removed maintenance costs that had been included in the previous filing that applied to OSS systems excluded from recovery. As noted in the previous paragraph, these costs are distinguishable from the maintenance costs that the *Cost Classification Order* precludes LECs from recovering because the maintenance is dedicated to OSS software modifications for number portability. We find that it is reasonable to allow U S WEST to recover some maintenance costs for OSS systems that were modified specifically to perform provisioning, querying, or porting functions. For these reasons, we conclude that 11% annually of the total costs of OSS modifications that are specific to number portability service is a reasonable amount to recover for OSS system software maintenance.

64. Based on extensive discussions, reflected in *ex parte* submissions on the record, U S WEST has addressed our concerns with respect to OSS modifications to claims it was required to make to implement number portability. Specifically, U S WEST has reduced its claims by removing the costs of modifications to the FAS, FAST; Code Talker; and LOA Imaging. With respect to the Other Deployment Expense for SOA/LSMS and the CRIS CR Surcharge Billing, U S WEST has demonstrated that these modifications are necessary to the provision of number portability. Moreover, the costs involved are modest and do not impact U S WEST's number portability end-user surcharge or its query service rates.

65. We agree, however, with AT&T's claim that allowing U S WEST to recover the costs of modifying all call processing systems would permit the recovery of a variety of costs that are not "for the provision of number portability."[200] U S WEST argues, however, that call processing would not work for ported numbers and customers with ported numbers could not receive calls from the LEC or any other network if these modifications were not made to the call processing systems. We find that, to the extent that modifications to these systems enable the system to transfer LRN information (provisioning), porting or querying functions, the costs for

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199 AT&T Opposition at 8.

200 *Id.* at 7 (*citing Cost Classification Order*, 13 FCC Rcd 24,502 at para. 14).

modifications are within our definition of eligible number portability costs. Modifications to call processing systems that do not perform one of the functions that are uniquely portability-related, are incidental to number portability in that they adapt existing systems to the number portability environment. As we stated in the *Third Report and Order*, carriers cannot recover carrier-specific costs not directly related to providing number portability, such as costs incurred as an incidental consequence of number portability.[201] We find, therefore, that U S WEST may only recover OSS costs related to call processing systems that function to provide provisioning, querying, or porting services for number portability.

66. We note that the opposing parties suggest that we should disallow many OSS-related costs claimed in U S WEST's Direct Case beyond those we disallow above.[202] We do not agree that all of the OSS modifications identified by Ad Hoc and AT&T in their oppositions fail to meet the two-part test we established for eligible LNP costs. In our view, some of the identified modifications are directly related to the provision of number portability; we allow the LECs to recover the costs of modifying OSS systems that provide functions essential to porting, querying, and provisioning number portability. For reasons described below, we also permit the incumbent LECs to recover the costs of modifying E911 systems, based on public interest considerations.

67. Although we conclude that the costs of E911 modifications are incidental to the provision of number portability,[203] we make an express exception to our cost recovery standard to allow recovery of certain types of E911 modifications because of the public safety concerns involved with the provision of E911 service.[204] We are concerned that without these modifications, the carrier that wins a customer may not be able to maintain a continuous connection between the new customer and emergency personnel during the porting process. We find that access to the 911 database is a necessary element of porting and provisioning because it permits the carrier that wins the customer the opportunity to ensure that the customer maintains a vital connection to police, fire, and other emergency services. We allow U S WEST, therefore, to recover the costs of E911 modifications that permit CLECs to have access to the 911 database for the purpose of updating customer information, and receiving line and number information.[205] This

[201] *Third Report and Order*, 13 FCC Rcd at 11,740, para. 72.

[202] *See* Ad Hoc Opposition at Workpaper 3; AT&T Opposition at 6-8, Exhibit 1; *see also* MNDPS Comments at 3.

[203] *See Cost Classification Order*, 13 FCC Rcd at 24,499, para. 8.

[204] *First Report and Order*, 11 FCC Rcd at 8378-79, paras. 49-50. We note that the Commission has required that the long-term number portability method support emergency services, such as 911 and E911, in keeping with the requirements of the Communications Assistance for Law Enforcement Act (CALEA). *See* Communications Assistance for Law Enforcement Act, Pub. L. No. 103-414, 108 Stat. 4279 (1994), 47 U.S.C. §§ 1001 et seq.

[205] *See, e.g.*, Direct Case, Attachment 5 at 3.

allowance does not include, however, the costs incurred by U S WEST for modifications to E911 or 911 systems that provide 911 service as part of the local service or plain old telephone service (POTS) the company provides to its customers. Modifications to OSS systems that relate to U S WEST's provision of E911 or 911 services to its customers do not fall within the definition of eligible number portability costs and may not be recovered through the end-user and query service charges.

VI. CALCULATION OF OVERHEADS

A. Background

68. In the *Third Report and Order,* the Commission concluded that because carrier-specific costs directly related to providing number portability only include costs carriers incur specifically in the provision of number portability, carriers may not use general overhead loading factors in calculating such costs. Instead, carriers may identify as carrier-specific costs directly related to providing long-term number portability only those incremental overheads that they can demonstrate they incurred specifically in the provision of long-term number portability.[206] In the *Cost Classification Order,* the Bureau concluded that the use of incremental overhead allocation factors determined through a special study, such as the one employed by Ameritech, was reasonable and consistent with the *Third Report and Order's* prohibition against use of general overhead factors.[207]

69. Generally, overhead costs are joint and common costs that are not directly attributable to any particular service. In general, carriers conduct cost studies to develop an overhead factor that is applied to direct costs to estimate the dollar amount of joint and common costs. In past proceedings, we have recognize that a LEC's basis for use of a particular overhead factor may have been determined by a cost study.[208] The *Cost Classification Order*, however, required that LECs demonstrate that any incremental overheads claimed are actually new overhead costs incremental to and resulting from the provision of long-term number portability.[209]

[206] *Third Report and Order*, 13 FCC Rcd at 11,740, para. 74.

[207] *Cost Classification Order*, 13 FCC Rcd at 24,508, para. 33.

[208] *800 Data Base Access Tariffs and the 800 Service Management System Tariff*, Order Designating Issues for Investigation, 8 FCC Rcd 5132 (1993); *800 Base Access Tariffs and the 800 Service Management System Tariff*, Order, 9 FCC Rcd 715 (1994); *Guidance to Proponents of Cost Models in Universal Service Proceeding: Customer Location and Outside Plant*, 12 FCC Rcd 18,340 (1997).

[209] *Cost Classification Order*, 13 FCC Rcd at 24,508, paras. 31-33.

The Bureau also stated that unbundled network element (UNE) overhead factors could serve as a useful check on the reasonableness of the incumbent LECs' incremental overhead allocations.[210]

70. In the *Designation Order*, the Bureau noted that preliminary reviews of U S WEST's tariff filings showed that U S WEST included significant amounts of "miscellaneous costs," "administrative costs," and "business fees" which appeared to reflect the inclusion of some general overhead.[211] Accordingly, the Bureau designated as an issue for investigation whether U S WEST's recovery of miscellaneous costs, administrative and business fees results in recovery of a portion of general overhead costs as U S WEST's number portability charges.[212] The Bureau directed U S WEST to explain how it calculated the "miscellaneous incremental expenses" it included in its network costs," and to file an explanation of how overhead cost factors related to such costs as building and space utilization were used in estimating "miscellaneous incremental overheads," "service delivery costs," "administrative," and "business fees" costs.[213] U S WEST was directed to file planned or actual expenditures for these functions. The Bureau also designated for investigation the issue of whether U S WEST's use of a 1.89 factor to adjust its estimated "forward looking incremental" query costs constitutes use of a general overhead factor.[214] With respect to the use of the 1.89 factor to adjust "forward looking incremental" query costs, the Bureau direct U S WEST to explain why use of this factor does not result in recovery of embedded costs rather than incremental costs of number portability.[215]

B. Direct Case

71. U S WEST denies including any pre-existing or embedded overhead in its administration costs for its end user charges, but does admit including "certain costs for 'administration and maintenance.'"[216] U S WEST asserts that all overhead costs were based on actual and planned expenditures for each specific workgroup, including service delivery costs, and network miscellaneous incremental overhead costs for functions directly associated with implementing and providing long-term number portability. U S WEST explains that these costs, i.e., miscellaneous incremental overhead costs, include work performed for "complex translations,

210 *Id.* at 24,510, para. 37.

211 *Designation Order* at para. 27.

212 *Id.*

213 *Id.*

214 *Id.* at para. 28.

215 *Id.*

216 Direct Case at 13.

special testing, planning, and project management."[217] U S WEST further asserts that because long-term number portability query service is subject to price cap regulation, it should be allowed to recover for shared infrastructure for its new long-term number portability service.[218] U S WEST maintains that under the Commission's rules for new services, LECs must use cost-based support for new services, including overheads. To that end, U S WEST asserts that although new service costs are forward looking, most new services use investment that was installed in earlier years at a cost higher than forward looking costs. U S WEST, therefore, claims that an overhead that accounts for this difference is applied to reflect the true cost of the service. U S WEST maintains that long-term number portability query services utilize existing capacity on U S WEST's SS7 network that was installed in the late 1980's at higher costs than those that apply today. Thus, U S WEST claims that the 1.89 overhead factor merely reflects this real cost of the existing infrastructure being used.[219]

C. Oppositions

72. AT&T argues that U S WEST's proposed rates are excessive because U S WEST included costs other than new, incremental costs.[220] AT&T also contends that U S WEST's use of a 1.89 factor is a collateral attack on the Commission's *Cost Classification Order* in that it seeks to recover the type of embedded costs that are the subject of U S WEST's Application for Review of the Commission's *Cost Classification Order*. [221]

73. Like AT&T, Albuquerque and Tucson argue that U S WEST's proposed rates are excessive because U S WEST included costs other than new, incremental costs, and because of its historic failure to invest in advanced central office equipment.[222] Albuquerque and Tucson also argue that U S WEST fails to support the 1.89 factor as an eligible long-term number portability cost; that this factor reflects an existing cost, and that U S WEST's use of the factor presents an opportunity for double recovery.[223]

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[217] *Id.* at 13, 27, 29. Service Delivery Costs are discussed in Section III of this *Order*.

[218] *Id*. at 31.

[219] *Id.*

[220] AT&T Opposition at 9. This issue was also raised generally by the Ad Hoc Telecommunications Users Committee in its Opposition. *See* Ad Hoc Opposition at 3.

[221] *Id*. at 10-13.

[222] Albuquerque and Tucson Opposition at 2.

[223] Albuquerque and Tucson Opposition, Declaration of Garth T. Aspaugh, at 2.

D. Rebuttals

74. In its rebuttal U S WEST maintains that its use of the 1.89 factor in developing its long-term number portability query service rates does not recover general corporate overheads, but merely reflects the real cost of the existing infrastructure used to support query service. As in its Direct Case, U S WEST insists that because "LNP query service is subject to price cap regulation, it is only appropriate that LECs be allowed use the same methodology for developing query charges as they do for any other new service."[224]

E. Discussion

75. The *Cost Classification Order* sets forth a general standard pursuant to which LECs can recover overhead costs in their long-term number portability rates. The Bureau based this general standard on the *Third Report and Order*, which states that "[b]ecause carrier-specific costs directly related to providing number portability only include costs carriers incur specifically in the provision of number portability, carriers *may not* use general overhead loading factors in calculating such costs . . . allowing general overhead loading factors for long-term number portability might lead to double recovery."[225] Specifically, carriers may identify as carrier-specific costs directly related to providing long-term number portability only those incremental overheads that they can demonstrate they incurred specifically in the provision of long-term number portability.[226]

76. Generally, overhead costs are joint and common costs that are not directly attributable to any particular service. Carriers usually conduct cost studies to develop an overhead factor that is applied to direct costs to estimate the dollar amount of joint and common costs. The *Cost Classification Order* required the LECs to demonstrate that any incremental overheads claimed are actually new costs incremental to and resulting from the provision of long-term number portability.[227] As stated above, the Bureau designated two issues concerning overhead costs claimed by U S WEST in its long-term number portability rates.[228]

77. First, the Bureau found that U S WEST had added significant amounts of "miscellaneous costs," "administrative" and "business fees" that appear to reflect the inclusion of

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224 Rebuttal at 6-7.

225 *Third Report and Order*, 13 FCC Rcd 11,740, para. 74.

226 *Id.*

227 *Cost Classification Order*, 13 FCC Rcd at 24,508, paras. 31-33

228 *Designation Order* at paras. 26-28.

some general overhead costs.[229] The Bureau directed U S WEST to demonstrate how these costs would not result in recovery of general overheads. The Bureau directed U S WEST to explain its development of miscellaneous incremental overheads, service delivery costs, administrative costs and business fees.[230] Second, the Bureau directed U S WEST to explain why the use of a 1.89 factor to adjust forward looking incremental query cost does not constitute use of a general overhead factor or result in recovery of embedded rather than incremental costs of number portability.[231] For this reason the Bureau directed U S WEST to explain how it calculated miscellaneous incremental overhead costs and its use of the 1.89 factor.

78. We note that in its original filing, U S WEST maintains that general overheads have been removed from this filing.[232] U S WEST further maintains that no general overheads were included in the calculations of the Part 69 Expense Factor.[233] In its Direct Case, U S WEST maintains that it did not apply overhead cost factors to the actual and planned costs included in the calculation of the end-user charge and that all overhead costs were based on actual and planned expenditures for each specific workgroup, which include service delivery costs and network miscellaneous incremental overhead costs.[234]

79. Our review of U S WEST's "miscellaneous incremental overhead" costs that U S WEST includes in its network costs reveal that these costs are similar to direct network costs claimed by other LECs in their long-term number portability rates. We note that in its original filing, U S WEST provided only a brief description of the network components and referenced Workpaper 5 for the detailed costs. U S WEST failed to mention in the description, however, that miscellaneous incremental overhead costs were included in the cost development.[235] Upon further evaluation, we find that the data presented in Workpaper 5 included an itemized list of these miscellaneous incremental overhead costs by account, along with costs for the network components referred to above. In addition, we found that Workpaper 5a provided a description of the related accounts.

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[229] *Id.* at para. 26.

[230] *Id.* at para. 27.

[231] *Id.* at paras. 27-28.

[232] U S WEST Transmittal No. 965 at 7. We note that U S WEST also indicates that their original query charges included general overheads, which have been disallowed and that it has developed new, more accurate cost studies.

[233] U S WEST Transmittal No. 965 at 38.

[234] Direct Case at 27. Service delivery costs are discussed in Section III.

[235] U S WEST Direct Transamittal No. 965 at 16-25.

80. In response to our *Designation Order*, U S WEST indicates in its direct case that the miscellaneous incremental overheads are employee-related costs that were and will be incurred in the direct support of provisioning and maintenance of the LRN functions and hardware that was added in the network. U S WEST further indicates that the work performed by the employees involves complex translations, planning, provisioning for DID, central office cutover, and central office capital.[236] We find that U S WEST has sufficiently demonstrated that these employee-related expenses identified in Workpaper 5 are in fact incremental to the provision of local number portability and are in compliance with the *Cost Classification Order*'s two-part test. In addition, our further review of U S WEST's miscellaneous incremental overhead costs indicates that they are similar to direct network costs claimed by other LECs in their long-term number portability rates. We, therefore, conclude that these costs are incremental to long-term number portability and we find them to be reasonable.

81. We agree with AT&T that U S WEST's use of the 1.89 Part 69 expense factor violates the Commission's *Third Report and Order* and *Cost Classification Order*. U S WEST effectively increases its query services direct costs by 89% compared, for example, to Ameritech's rates calculation using a 2.1% factor and GTE's rates where no overhead factor was used at all.[237] Further, U S WEST's initial filing and Direct Case fail to demonstrate or justify that the 1.89 factor reflects new, incremental overhead costs as required by the Commission's standard for recovery of overheads pursuant to the *Third Report and Order* and *Cost Classification Order*. We conclude that U S WEST's overhead costs, calculated using this overhead factor, are unjust and unreasonable. Furthermore, U S WEST's explanation that the 1.89 factor accounts for higher prices paid in the 1980s when most of its network was purchased is inconsistent with the Cost Classification Order's requirement that only new costs be recovered.

82. Based on extensive discussions, reflected in *ex parte* submissions on the record, U S WEST has addressed our concerns with respect to the use of the 1.89 overhead factor. In an *Ex Parte* submission, however, U S WEST has agreed to remove the costs generated by the 1.89 factor from its query service rates.[238] As reflected in its revised filing, the removal of the 1.89 factor lowers U S WEST's query services rates by 89% and makes them comparable to rates charged by other incumbent LECs for query services.[239] We are, therefore, satisfied that U S WEST's recovery of its incremental overhead costs is reasonable.

[236] *See* Direct Case at 29.

[237] Ameritech Transmittal No. 1186 "LNP Cost Factor" Attachment at 34; GTOC Transmittal Nos. 1190, 1208; GSTC Transmittal Nos. 271 and 284.

[238] *See Ex Parte* Letter from Bill Johnson, U S WEST, to Magalie Salas, FCC (June 30, 1999).

[239] *See* U S WEST Transmittal No. 1002.

VII. ALLOCATION OF COSTS BETWEEN END-USER AND QUERY SERVICES

A. Background

83. In the *Third Report and Order*, we required carriers, when filing their number portability end-user and query service tariffs, to separate the portion of their carrier-specific costs attributable to their number portability services for end users from that portion attributable to their number portability query services for other carriers.[240] In the *Cost Classification Order*, the Bureau provided specific, detailed guidance as to the proper method of allocating eligible number portability costs between the end-user and query service charges.[241] The Bureau determined the proper allocation of costs incurred for specific number portability services.[242] In particular, the Bureau stated that incumbent LECs should allocate any portion of eligible number portability costs that is incurred specifically to provide N-1 query services to the N-1 query services.[243] Where the incumbent LECs intended to establish several types of N-1 query services, the Bureau directed that the LECs allocate the eligible number portability costs incurred specifically to provide each type of query service to that particular service.[244] Similarly, the Bureau directed the incumbent LECs to allocate costs incurred only to provide number portability functions to end users to the end-user charge.[245] The Bureau also determined the proper allocation of any remaining eligible number portability costs.[246] Generally, the Bureau directed the incumbent LECs to allocate these remaining costs on the basis of the capacity requirements for each type of service.[247] For incumbent LECs that elect to provide several types of N-1 query services, the

240 *Third Report and Order*, 13 FCC Rcd at 11,778-79, para. 147. Under the number portability architecture, the N-1 carrier is the entity transferring the call to the N, or terminating carrier. The N carrier is the entity terminating the call to the end user. *See Third Report and Order*, 13 FCC Rcd at 11,711, para. 15; *see also Second Report and Order*, 12 FCC Rcd at 1323, n.207. An N-1 carrier may either perform queries on its own, or it may arrange for other carriers or third parties to perform those querying services. Thus, incumbent LECs have the opportunity to provide number portability services for their own end users (including query services on behalf of their end users' calls), as well as providing number portability query services for other carriers.

241 *Cost Classification Order*, 13 FCC Rcd at 24,510-12, paras. 38-44.

242 *Id.* at 24,511, para. 40.

243 *Id.*

244 *Id.*

245 *Id.*

246 For costs to be eligible, they must be costs carriers incur specifically in the provision of number portability services, and not costs that carriers incur as an incidental consequence of number portability. *See Cost Classification Order*, 13 FCC Rcd at 24,501, para. 12.

247 *Cost Classification Order*, 13 FCC Rcd at 24,511, para. 41.

Bureau directed that allocation of costs should be made to each service on the basis of the capacity requirements for the service.[248]

84. In the *Designation Order*, the Bureau noted that it was unclear whether U S WEST followed the *Cost Classification Order* in allocating costs between number portability services.[249] Accordingly, the Bureau designated for investigation the issue of whether U S WEST's method of allocating number portability costs between the end-user and query services charges is reasonable.[250] The Bureau directed U S WEST to provide more complete explanations of its basis for allocating number portability costs among services and why its method is reasonable.[251] In addition, the Bureau directed U S WEST to submit, as part of its Direct Case, the worksheet described in the *Cost Classification Order*, and specifically to include the allocation of each cost among the number portability services as required by the order.[252] Finally, the Bureau directed U S WEST to include sufficient data and calculations to show the assumptions used to allocate the costs of shared facilities, such as the costs of shared regional databases and links.[253]

B. Direct Case

85. U S WEST states that it initially allocated any investment or portion of an investment dedicated solely to a particular number portability service to that service's costs.[254] U S WEST then allocated the costs of investments attributable to both query services and the end-user charge, including investments for the regional databases, based on query demand.[255] Using actual 1998 traffic studies, U S WEST developed demand forecasts that resulted in an

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248 *Id.*

249 *Designation Order* at para. 31.

250 *Id.* at para. 32.

251 *Id.* at para. 33.

252 *Id.*

253 *Id.*

254 Direct Case at 32. For example, U S WEST allocated the entire cost of the recording software that is used exclusively for billing default queries to default query services, and the service delivery costs that are incurred specifically to enable the porting of telephone numbers to the end-user charge. *Id.*

255 *Id.* at 33.

allocation based on a capacity of 7% for query services to other carriers,[256] and 93% for query services on behalf of U S WEST's end users.[257]

C. Oppositions and Rebuttal

86. No party filed an Opposition or Rebuttal on this issue.

D. Discussion

87. We find that U S WEST has followed the Commission's and Bureau's guidance, as provided in the *Third Report and Order* and *Cost Classification Order*, by allocating its number portability costs across end-user and query services for other carriers in accordance with the capacity requirements of each service. We find that allocation based on query demand accomplishes this task because, as U S WEST points out, the query demand method effectively allocates the entire investment, including spare capacity, to all services in the same proportion as usage for those services.[258] In addition, we note that no party filed an Opposition against U S WEST's Direct Case on this issue. Accordingly, we need not alter U S WEST's method of allocating number portability costs between end-user and query services because its method meets the requirements of the *Third Report and Order* and *Cost Classification Order*.

VIII. JURISDICTIONAL SEPARATIONS

A. Background

88. In the *Third Report and Order*, we found that section 251(e) authorizes the Commission to provide the distribution and recovery mechanism for all costs of providing long-term number portability.[259] We concluded that an exclusively federal recovery mechanism for long-term number portability would minimize the administrative and enforcement difficulties that might arise were jurisdiction over long-term number portability divided.[260] We noted that under

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[256] The 7% for queries for other carriers is made up of 2% for Default Tandem Query Service, 1% for End Office Query Service, and 4% for Database Query Service. *Id.*

[257] Direct Case at 33. U S WEST shows the results of its allocation in Workpaper 12 of its Transmittal No. 975. Direct Case at 34.

[258] *Id.*

[259] *Third Report and Order*, 13 FCC Rcd at 11,720, para. 29.

[260] *Id.*

the exclusively federal number portability cost recovery mechanism, incumbent LECs' number portability costs would not be subject to jurisdictional separations.[261]

89. The *Designation Order* noted that although the Commission established an exclusively federal recovery mechanism for long-term number portability in the *Third Report and Order*, some LECs may have included, or may be including, some or all of these costs in their jurisdictional separations procedures.[262] The *Designation Order* further stated that, to the extent long-term number portability costs have been assigned to the intrastate jurisdiction, those costs also may have been recovered through intrastate rates.[263] Recovery in the federal jurisdiction may, thus, constitute double recovery.[264] Similarly, to the extent long-term number portability costs are assigned to the intrastate jurisdiction prospectively, and LECs seek to recover those costs through intrastate rates, recovery in the federal jurisdiction would constitute double recovery.[265]

90. In this light, the Bureau designated the issue of what separations treatment and what intrastate ratemaking treatment may have been or may be accorded to U S WEST's long-term number portability costs.[266] The Bureau directed U S WEST to file an explanation of how prior year costs related to long-term number portability implementation were treated with respect to jurisdictional separations.[267] The Bureau directed U S WEST to (1) demonstrate that the long-term number portability costs booked in past periods and included in the development of federal number portability charges have not been recovered already in the state jurisdiction; (2) explain how state ratepayers would be made whole if the Commission allows federal recovery of costs that have been assigned to the intrastate jurisdiction and included in state ratemaking processes; (3) explain how costs related to long-term number portability implementation would be treated prospectively with respect to jurisdictional separations; and (4) demonstrate that long-term number portability costs included in the development of federal number portability charges will not be recovered prospectively in the state jurisdiction.[268]

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261 *Id.*

262 *Designation Order* at para 35.

263 *Id.*

264 *Id.*

265 *Id.*

266 *Id.* at para 36.

267 *Id.*

268 *Id.*

B. Direct Case

91. U S WEST states that the fact that it has not removed number portability costs from the jurisdictional process in prior years has had little impact on its intrastate rates.[269] U S WEST asserts that the existing rates in most of its states were established before U S WEST incurred any long-term number portability costs.[270] In particular, U S WEST argues that with the exception of a minimal amount of OSS expenses incurred in 1996, all other long-term number portability costs were incurred after 1996.[271] U S WEST promises to remove long-term number portability costs from future intrastate proceedings if we allow federal recovery of costs previously assigned to the intrastate jurisdiction.[272] To accomplish this, U S WEST plans to book number portability end-user and IXC charges to the Miscellaneous Revenues account.[273] In addition, U S WEST plans to establish sub-accounts to separate end-user revenues from carrier revenues.[274] Finally, because most number portability costs are switch-related, U S WEST plans to base jurisdictional separations of these revenues on Dial Equipment Minutes to establish the necessary symmetry between costs in both jurisdictions and to ensure that costs will be zeroed-out for state regulatory purposes.[275]

92. U S WEST states that the issue of long-term number portability has arisen recently in several of its state proceedings.[276] U S WEST expects to make an adjustment to its Arizona test period[277] as soon as this Commission determines the final level of long-term number portability cost recovery.[278] U S WEST states that the Utah Commission disallowed all of U S WEST's interconnection costs including estimated long-term number portability costs from its

[269] Direct Case at 35.

[270] *Id.*

[271] *Id.* U S WEST highlights the absence of long-term number portability costs in state rates in Attachment 7, summarizing recent rate case activity in all 14 states served by U S WEST. *Id.*

[272] *Id.*

[273] *Id.* at 36.

[274] *Id.*

[275] *Id.*

[276] *Id.* at 35.

[277] In intrastate proceedings, LECs usually establish their rates based on a one-year test period.

[278] Direct Case at 35.

1996 test year.[279] According to U S WEST, its Washington rates reflect a small amount of OSS license costs that it also included in its interstate filing.[280]

C. Oppositions

93. Ad Hoc, AT&T, and MNDPS are concerned that U S WEST may recover costs both through its federal charges for long-term number portability and through intrastate proceedings.[281] Ad Hoc argues that U S WEST does not give enough detail to determine whether each of its 14 states' regulatory regimes allowed it to recover the number portability costs allocated to the state jurisdiction.[282] In particular, Ad Hoc asserts that U S WEST could have recovered its number portability costs under state price caps, or raised its number portability costs if it decreased other costs.[283] As an alternative, Ad Hoc argues that if a state price-cap regime includes a sharing mechanism, the inclusion of number portability costs under price caps would inflate U S WEST's costs and thus reduce its obligations under the sharing mechanism.[284] Finally, Ad Hoc argues that U S WEST's proposal concerning separations treatment actually continues to apply separations to both number portability costs and revenues.[285] AT&T asserts that U S WEST does not indicate how it has corrected its intrastate rates or refunded the overstated access and end-user charges caused by the inclusion of number portability costs in the separations process.[286] AT&T also argues that we should require U S WEST to account for the fact that some of its purportedly "unrecovered" investments and expenses, for which it claimed an annual 11.24% return, were in fact recovered through its intrastate access and end-user rates.[287] MNDPS asserts that, if service order negotiation costs are recovered from number portability

279 *Id.*

280 *Id.*

281 *See* Ad Hoc Opposition at 13-16; AT&T Opposition at 15-17; MNDPS Comments at 4.

282 Ad Hoc Opposition at 14, 15.

283 *Id.*

284 *Id*. at 15.

285 *Id.* at 16.

286 *Id.* AT&T further argues that U S WEST's offer to include subsequent number portability revenues in the separations process does not alter the fact that it did not remove number portability costs for prior years from the separations process. AT&T Opposition at 15.

287 AT&T Opposition at 17.

charges, U S WEST must show that those costs are not already recovered from its intrastate non-recurring and recurring charges.[288]

D. Rebuttal

94. U S WEST argues that it included very little of its number portability costs in intrastate rates because no number portability costs were being incurred or anticipated when the current intrastate rates were established.[289] U S WEST further asserts that its solution for removing number portability costs from separations addresses the issue of prior recovery from state jurisdictions.[290] In particular, U S WEST asserts that, under its proposal, intrastate ratepayers would receive a revenue credit for all federally-allowed costs, regardless of when those costs were incurred.[291] U S WEST believes that its approach produces the same result, in terms of impact on net income, as more complicated methods.[292]

D. Discussion

95. Based on U S WEST's Direct Case and Rebuttal, we find that U S WEST's proposal for excluding long-term number portability costs from jurisdictional separations is unjust and unreasonable. We agree with Ad Hoc that U S WEST's proposal for treating its number portability costs and revenues actually continues to apply separations to both those number portability costs and revenues.[293] This treatment violates our decision in the *Third Report and Order* that, under the "exclusively federal" number portability cost recovery mechanism, incumbent LECs' number portability costs would not be subject to jurisdictional separations.[294] U S WEST's offer to give intrastate ratepayers a revenue credit for any federally-allowed number portability costs does not change our decision. This would leave the burden on U S WEST or the states to monitor on a continuous basis the possibility of even accidental double recovery of number portability costs.

[288] MNDPS Comments at 4. In Minnesota, U S WEST has filed a Winback Tariff in which it will waive the non-recurring charge and up to two months of recurring charges for customers returning to U S WEST from a competitor. *Id.*

[289] Rebuttal at 25-26.

[290] *Id.* at 26.

[291] *Id.*

[292] Rebuttal at 27.

[293] Ad Hoc Opposition at 16.

[294] *Third Report and Order*, 13 FCC Rcd at 11,720, para. 29.

96. During the course of this investigation, in light of *ex parte* communications on the record,[295] we find that U S WEST has developed procedures that will remove future number portability costs from the separations process.[296] Furthermore, based on U S WEST's revised filing,[297] we find that U S WEST has removed from its federal tariff the long-term number portability OSS costs that it has already recovered in intrastate rates. Accordingly, as we found with Ameritech and GTE in the recently-concluded investigation of their number portability tariffs,[298] we find that no adjustments to U S WEST's filing based on jurisdictional separations is required because no double recovery will occur. Moreover, U S WEST has represented that the relatively small amount of OSS costs are the only costs recovered through the state jurisdictions, and that, on a prospective basis, its claimed number portability costs are not, and will not be, subject to separations treatment.[299]

97. We note the assertion of Ad Hoc, AT&T, and MNDPS that U S WEST might have allocated more long-term number portability costs to intrastate rates even under state alternative regulation plans.[300] However, Ad Hoc, AT&T, and MNDPS have not offered any proof of their assertions. In addition, U S WEST asserts on the record that it has recovered very little of its number portability costs in intrastate rates,[301] and has removed from its federal filing the long-term number portability costs that it already recovered in intrastate rates. These assertions are consistent with our finding in the *Third Report and Order* that long-term number portability costs would be recovered through an "exclusively federal" mechanism.[302] U S WEST's assertions may best be evaluated by state commissions in their own rate-making proceedings. In light of the affirmative representations made by U S WEST that it has removed from its federal tariff the few long-term number portability costs recovered in its intrastate rates, and in the absence of evidence to the contrary, we will not make adjustments to U S WEST's filings based on jurisdictional separations. If evidence is presented to the Commission that any of U S WEST's long-term number portability costs recovered through the end-user or query service charge have

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295 *See, e.g., Ex Parte* Letter from William Johnston, U S WEST, to Magalie Roman Salas, FCC (June 30, 1999) (citing discussion on June 30 about U S WEST's treatment of number portability costs and revenues for separations purposes).

296 *See* U S WEST Transmittal No. 1002.

297 *Id.*

298 *See In the Matter of Long-Term Number Portability Tariff Filings*, CC Docket No. 99-35, Memorandum Opinion and Order, FCC 99-158, para. 154 (adopted July 1, 1999).

299 *See* U S WEST No. 1002.

300 *See* Ad Hoc Opposition at 13-16; AT&T Opposition at 15-17; MNDPS Comments at 4.

301 *See* Rebuttal at 25-26.

302 *See Third Report and Order*, 13 FCC Rcd at 11,720, para. 29.

also been recovered through intrastate rates, we will adjust the levels of U S WEST's end-user or query service charge on a prospective basis to correct for any double recovery, and will entertain any complaints for damages under sections 207 and 208 of the Act.[303]

IX. JUST AND REASONABLE RATES

A. Background

98. The Communications Act requires that all charges, practices, classifications, and regulations for and in connection with interstate or foreign communication by wire or radio be just and reasonable.[304] The Act further provides that any charge, practice, classification, or regulation found unjust or unreasonable is declared unlawful.[305] Courts have consistently found in the Act a Congressional intent to grant the Commission broad discretion in "selecting methods . . . to make and oversee rates."[306] In doing so, we may make any "reasonable selection from the available alternatives."[307] Rather than insisting upon a single regulatory method for determining whether rates are just and reasonable, courts and other federal agencies with rate authority similar to our own evaluate whether an established regulatory scheme produces rates that fall within a "zone of reasonableness".[308] For rates to fall within the zone of reasonableness, the agency rate order must undertake a "reasonable balancing" of the "investor interest in maintaining financial integrity and access to capital markets and the consumer interest in being charged non-exploitative rates."[309]

99. In the *Third Report and Order*,[310] the Commission established standards for carrier recovery of costs related to providing long-term local number portability. Specifically, we determined that only those carrier-specific costs incurred directly for the provision of number

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303 47 U.S.C. §§ 207, 208.

304 47 U.S.C. § 201.

305 47 U.S.C. § 201(b).

306 *See In re Matter of Beehive Telephone Co., Inc., Beehive Telephone, Inc. Nevada,* Order on Reconsideration, 13 FCC Rcd 11,795, 11803 n.48 (*citing MCI Telecommunications Corp. v. FCC,* 675 F.2d 408, 413 (D.C. Cir. 1982)).

307 *MCI Telecommunications Corp. v. FCC,* 675 F.2d 408, 413 (D.C. Cir. 1982).

308 *See, e.g., FERC v. Pennzoil Producing Co.,* 439 U.S. 508, 517 (1979); *AT&T v. FCC*, 836 F.2d 1386, 1390 (D.C. Cir. 1988) (*quoting Jersey Cent. Power & Light v. FERC,* 810 F.2d 1168, 1177 (D.C. Cir. 1987)). *See also Wisconsin v. FPC,* 373 U.S. 294, 309 (1963); *FPC v. Natural Gas Pipeline Co*., 315 U.S. 575, 585-86 (1942).

309 *Jersey Cent. Power & Light,* 810 F.2d at 1177-78. *See Penzoil Producing*, 439 U.S. at 517 (to fall within the zone of reasonableness, rates must be neither "less than compensatory" nor "excessive").

310 *Third Report and Order,* 13 FCC Rcd at 11,701.

portability services would be eligible for recovery through the federal cost recovery mechanism as a local number portability costs.[311] We delegated authority to the Bureau to determine appropriate methods for apportioning joint costs[312] among portability and non-portability services, and to issue any order to provide guidance to carriers filing their tariffs.[313] Pursuant to this authority, the Bureau established a two-part test for identifying eligible carrier-specific costs. The Bureau determined that these eligible costs were ones that: (1) would not have been incurred by the carrier "but for" the implementation of number portability; and (2) were incurred "for the provision of number portability" service.[314] We have examined U S WEST's long-term number portability tariff submissions pursuant to the standards established in the *Third Report and Order* and the *Cost Classification Order*.

B. Discussion

100. Based on the entire record before us, we find that certain costs claimed in U S WEST Long-Term Number Portability Transmittal Nos. 965 and 975, filed January 26, 1999 and March 9, 1999, with effective dates of February 10, 1999 and March 24, 1999, respectively, are unjust and unreasonable and, accordingly, unlawful under section 201(b) of the Act.[315] We find, however, that the rates U S WEST has established in U S WEST Long-Term Number Portability Transmittal No. 1002, filed July 2, 1999, with an effective date of July 9, 1999, revising U S WEST's original tariff transmittals, are just and reasonable and, therefore, lawful. Based on the above analysis, we conclude that the revised rates established in U S WEST Transmittal No. 1002 are based only on costs directly related to the provision of number portability and, therefore, are the reasonable rates that should have been in effect from the effective date of U S WEST's original number portability tariff transmittal. The rates established in U S WEST Transmittal No. 1002 must therefore be used as the benchmark in calculating customer refunds as ordered below.[316]

X. CONCLUSION AND ORDERING CLAUSES

101. For the reasons stated herein, **WE FIND** that the long-term number portability rates filed by U S WEST in Long-Term Number Portability Transmittal Nos. 965 and 975 filed on January 26, 1999 and March 9, 1999, respectively are unreasonable. Furthermore for the reasons stated herein, **WE FIND** that the long-term number portability rates filed by U S WEST in Long-

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311 *Third Report and Order*, 13 FCC Rcd at 11,740 para. 72.

312 *See Cost Classification Order*, 13 FCC Rcd at 24,495.

313 *Third Report and Order*, 13 FCC Rcd at 11,740, para. 75.

314 *Cost Classification Order*, 13 FCC Rcd at 24,500, para. 10.

315 47 U.S.C. § 201(b).

316 *See infra*, Section X.

Term Number Portability Transmittal No. 1002 on July 2, 1999, that are subject to this investigation and identified in this Order, are just and reasonable.

102. **IT IS FURTHER ORDERED** that U S WEST **SHALL FILE** supplements reflecting the one day suspension of Transmittal No. 2 within five business days of the release of this Order. For this purpose, we waive sections 61.58 and 61.59 of the Commission's rules, 47 C.F.R. §§ 61.58, 61.59. U S WEST should cite the "FCC" number on the instant Order as the authority for the filings.

103. **IT IS FURTHER ORDERED** that pursuant to sections 4(i), 202(b), 203, 204(a), and 205(a) of the Communications Act, 47 U.S.C. §§ 154(i), 201(b), 203, 204(a), 205(a), U S WEST **SHALL REFUND** to its customers, with compounded daily interest, the difference between the actual local number portability revenues it obtained between February 1, 1999 and the effective date of U S WEST Long-Term Number Portability Transmittal No. 1002, and the revenues it would have obtained during this period based on the rates in U S WEST Long-Term Number Portability Transmittal No. 1002. Interest shall be computed on the basis of interest specified by the United States Internal Revenue Service.

104. **IT IS FURTHER ORDERED** that pursuant to sections 4(i), 4(j), 201(b), 202(a), 203(a), 204(b), 205, and 403 of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 154(j), 201(b), 202(a), 203(a), 204(b), 205, and 403, that U S WEST **SHALL SUBMIT** its plan for issuing refunds within 30 calendar days of the date of release of this Memorandum Opinion and Order.

105. **IT IS FURTHER ORDERED** that the Chief, Common Carrier Bureau, is **DELEGATED AUTHORITY** under section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, to review the refund plan filed by U S WEST, and any oppositions filed thereto, and to resolve any issues raised by those pleadings, and to direct U S WEST to issue refunds as appropriate.

106. **IT IS FURTHER ORDERED**, that the investigation and accounting order imposed by the Common Carrier Bureau in CC Docket No. 99-35, *Long-Term Number Portability Tariff Filings*, DA 99-561, Order Designating Issues for Investigation, with respect to the designated issues as discussed herein **ARE TERMINATED**.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

CONSOLIDATED DISSENTING STATEMENT OF COMMISSIONER HAROLD FURCHTGOTT-ROTH

Re: Long Term Number Portability Tariff Filings of Ameritech Operating Companies, GTE System Telephone Companies, GTE Telephone Operating Companies, Pacific Bell, and Southwestern Bell Telephone Company; Long Term Number Portability Tariff Filings of U S West Communications, Inc. (CC Docket No. 99-35)

I respectfully dissent from these items terminating the Commission's investigations of the respective long-term number portability tariff transmittals filed by the above-captioned incumbent LECs.

A little more than one year ago, I expressed my concern that the cost recovery scheme adopted by the Commission for long-term number portability appeared to be a replay of the cost-based, rate-of-return regulation that had produced incentives for inefficient behavior.[1] At that time, I warned that this type of regulation burdens regulators as they are forced to review and to monitor countless and tedious records of costs.[2] The items released today are the result of just such a review. And to what end?

Countless hours of time have been spent by talented Commission professionals in this exercise. Many more hours have been consumed by representatives of the various carriers whose tariffs are at issue attempting to justify their costs. And for what?

Can any of us be certain that the respective rates in the tariffs approved or prescribed by the Commission today recover these costs perfectly? More likely, we can only be certain that these rates are not perfect, although not for a lack of effort. There are simply too many beans to count to do so without error. I am deeply troubled when resources are squandered in the futile search for an exact answer when an approximate one -- and one that would create incentives for efficient conduct -- is available for the taking.

I would rather be approximately right than exactly wrong. As I have stated previously, I believe that a better approach would be to establish a maximum amount that could be recovered for long-term number portability from a federal fee. If, through prudent management, a carrier kept costs below the federal cap, it would be rewarded for its efficiency. If a carrier's costs exceeded the federal cap, the carrier could seek recovery from appropriate state authorities. In either case, carriers would have a strong incentive to keep costs as low as possible to the benefit

[1] *See* Separate Statement of Commissioner Harold Furchtgott-Roth, Telephone Number Portability, Third Report and Order, 13 FCC Rcd 11,701, CC Docket No. 95-116 (1998).

[2] *Id.*

of consumers.[3] Moreover, the Commission would be assured of reaching an approximate result without consuming valuable resources in a fruitless debate over minute levels of detail.

Finally, I write to express my concern about the procedural framework upon which these items are based. In today's orders, the *Commission* applies a standard established by the *Common Carrier Bureau*.[4] I am distressed by a delegation of authority that leads to such upside-down results. I am particularly troubled by the application of the Bureau's standard when several carriers have sought review of this order, and those petitions remain pending before us. Although I withhold my comments on the merits of those proceedings, I express my concern for a procedure that I believe has been turned on its head.

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[3] *Id.*

[4] *See, e.g.,* Long Term Number Portability Tariff Filings of Ameritech Operating Companies, GTE System Telephone Companies, GTE Telephone Operating Companies, Pacific Bell, and Southwestern Bell Telephone Company, CC Docket No. 99-35, at para. 45 ("[Ameritech's] costs appear to be unrelated to the provision of number portability as defined in the *Third Report and Order* and the [Bureau's] *Cost Classification Order*.").