

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

In the Matter of)
)
BellSouth Telecommunications, Inc.) Transmittal No. 629
)
)

AT&T CORP. PETITION TO REJECT OR SUSPEND TARIFF

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SUMMARY

Just twenty-six days after the Commission suspended and set for investigation its thousands-block number pooling cost recovery tariff (Transmittal No. 623), BellSouth Telecommunications, Inc. (“BellSouth”) submitted a second, equally flawed tariff. While this filing decreases slightly the costs BellSouth believes are eligible for recovery (\$64 million instead of \$74 million) it remains facially noncompliant with Commission orders and does not correct the infirmities of BellSouth’s recently suspended Transmittal No. 623. Accordingly, this BellSouth tariff should be rejected, or at a minimum, it should be suspended for five months and set for investigation.

Rejection is particularly appropriate in this instance because BellSouth’s tariff suffers from many of the same flaws as the prior BellSouth, Qwest and Sprint thousands-block number pooling tariffs that were suspended and set for investigation only weeks ago. The Commission’s and other affected industry participant’s resources should not be wasted reviewing facially flawed tariff transmittals, which BellSouth and other incumbents apparently will continue to file – especially given the expedited review schedule imposed by the “streamlined” review requirements.

Not only does BellSouth’s tariff suffer from many of the same infirmities, but it fails to address some of the very issues the Commission cited as causes for suspending the prior BellSouth, Qwest and Sprint thousands-block number pooling tariffs. At bottom, BellSouth’s proposed rate increases include state thousands-block pooling costs specifically excluded by Commission rule, do not overcome the Commission’s presumption against recovery, do not conform to the specific rules set forth in the Commission’s recent Numbering Resource Optimization (“NRO”) Orders, fail to reflect the required offset of significant cost reductions

achieved by thousands-block number pooling, and are not properly supported. For these reasons, the Commission should reject or at minimum suspend for five months and investigate the latest BellSouth tariff. Indeed, there can be no reasoned basis for the Commission to depart from its existing rulings by letting this tariff take effect.

First, BellSouth's filing fails to acknowledge, much less overcome, the Commission's presumption against thousands-block number pooling cost recovery. Indeed, BellSouth ignores the Commission's direct articulation of very narrowly drawn allowable cost recovery rules and then proceeds to apply the mischaracterized rules incorrectly. BellSouth's tariff contains numerous inappropriately claimed exogenous costs as well as costs clearly excluded by the Commission's rules including, among other items: costs not directly incurred in implementing thousands-block number pooling; costs incurred prior to the national roll-out; costs incurred for adapting existing systems to the presence of thousands-block number pooling; costs associated with number administration generally; and costs incurred for state ordered thousands-block pooling in advance of the national implementation.

Second, Bellsouth misconstrues and misapplies the Commission's fundamental exogenous cost recovery rules by ignoring the central tenet that in order for a cost to be exogenous, it must be imposed on the carrier by virtue of a legal mandate. Further, BellSouth disregards the accepted principle that a cost incurred *before* the implementation of the Commission's mandate cannot be an exogenous cost.

Third, despite the Commission's recent unambiguous reiteration of its offset requirement, including a clear direction that filers must account for savings associated with delay of North American Numbering Plan ("NANP") exhaust, BellSouth fails to show that any recoverable exogenous thousands-block number pooling implementation costs exceed the costs

that would otherwise have been incurred in the absence of thousands-block number pooling. BellSouth, in an outright reversal of its stated position at the beginning of the Commission's NRO proceeding, continues to neglect the savings attributable to the delay of the NANP exhaust altogether. BellSouth, furthermore, incorrectly calculates and allocates the savings resulting from avoided Numbering Plan Area ("NPA") exhaust and understates the savings from delayed or avoided NPA splits and overlays. As AT&T shows, had BellSouth correctly accounted for these avoided costs, the savings offset would completely eliminate its claimed exogenous adjustments.

Finally, BellSouth has failed to rebut the Commission's presumption that no additional cost recovery is justified, and it therefore does not qualify for exogenous recovery under the Commission's standards. The obvious errors and omissions discovered in the course of "streamlined" review, coupled with a disregard of explicit Commission rulings, warrant rejection, or at least the closer scrutiny possible in a full investigation while the tariff is suspended for five months. Because BellSouth's tariff again contains numerous unambiguous violations of Commission rules and does not address specific issues the Commission identified in its recent suspension orders as needing resolution, there can be no reasoned basis for the Commission to depart from its existing rules and allow this deficient tariff to go into effect.

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AT&T CORP. PETITION TO REJECT OR SUSPEND TARIFF

Pursuant to Section 1.773 of the Commission’s Rules, 47 C.F.R. § 1.773, the Commission’s *Third NRO Order*¹ and the Commission’s recent *Suspension Orders*² AT&T Corp. (“AT&T”) hereby requests that the Commission reject, or suspend for five months and investigate, the above-captioned tariff filing by BellSouth seeking approximately \$64 million in alleged exogenous extraordinary costs incurred for the implementation of thousands-block number pooling.

It is clear on the face of the instant filing that it fails to comply with the Commission’s orders and accordingly it should be rejected.³ At a minimum, the tariff raises

¹ *Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability*, CC Docket Nos. 96-98, 99-200, 95-116, *Third Report and Order and Second Order on Reconsideration*, 17 FCC Rcd 252 (2001) (“*Third NRO Order*”).

² *Bell South Tariff FCC No. 1, Transmittal No. 623, Qwest Tariff FCC No. 1, Transmittal No. 120*, WCB/PPD No. 02-08, *Order*, DA 02-747 (Apr. 1, 2002) (“*BellSouth/Qwest Suspension Order*”); *Sprint Local Telephone Companies Tariff FCC No. 3, Transmittal No. 192*, WCB/Pricing No. 02-10, *Order*, DA 02-898 (Apr. 18, 2002) (“*Sprint Suspension Order*”) (collectively “*Suspension Orders*”).

³ A tariff is subject to rejection when it is prima facie unlawful, in that it demonstrably conflicts with the Communications Act or a Commission rule, regulation or order. *See*,

(footnote continued on next page)

substantial questions of lawfulness that cannot be dispelled in the highly abbreviated “streamlined” process afford by this proceeding.

Although AT&T believes that the Commission’s decision to allow incumbent local exchange carriers (“ILECs”) to recover pooling costs through access charges is unfair and anticompetitive,⁴ its concerns were somewhat alleviated by the *Third NRO Order’s* insistence that the amounts involved in any such recovery would be minimal, if there were any at all.⁵ Yet, BellSouth’s filing to recover number pooling costs, totaling approximately \$64 million,⁶ certainly does not seek recovery of minimal, extraordinary costs. Nor could inclusion of this amount as an exogenous cost adjustment to access charges pass as a competitively neutral cost recovery mechanism. These requests for exogenous adjustments are particularly striking given the Commission’s presumption that no additional recovery for thousands-block number pooling is justified.⁷ As the Commission made abundantly clear, the presumption could be rebutted only if

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e.g., American Broadcasting Companies, Inc. v. AT&T, 663 F.2d 133, 138 (D.C. Cir. 1980); *MCI v. AT&T*, 94 F.C.C.2d 332, 340-341 (1983). Suspension and investigation are appropriate where a tariff raises substantial issues of lawfulness. *See AT&T, Transmittal No. 148*, Memorandum Opinion and Order, 56 RR2d 1503 (1984); *ITT (Transmittal No. 2191)*, 73 F.C.C.2d 709, 716, n.5 (1979) (*citing AT&T (Wide Area Telecommunications Service)*), 46 F.C.C.2d 81, 86 (1974).

⁴ U.S.C. § 251(e)(2) (“the cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”).

⁵ *Third NRO Order* ¶¶ 25, 38-41.

⁶ AT&T estimates that more than \$60 million of BellSouth’s \$64 million exogenous claim, if permitted to go into effect, will be recovered through multi-line PICC access charges.

⁷ *Third NRO Order* ¶ 39; *see also BellSouth/Qwest Suspension Order*, ¶ 5; *Sprint Suspension Order*, ¶ 2.

“extraordinary” pooling implementation costs met a stringent three-part test and exceeded all the savings generated through pooling.

As shown in Sections I and II, BellSouth fails to carry its burden of proof and fails to demonstrate that it is seeking exogenous recovery solely for eligible costs. At the outset, a number of the costs are unmistakably ineligible, thereby rendering BellSouth’s tariff unlawful. Certain costs are not eligible because they have already been recovered through Local Number Portability (“LNP”) cost recovery mechanisms or other numbering administration procedures, or because they are specifically excluded by the Commission rules. Furthermore, the lack of adequate supporting detail for many of the other charges makes it impossible to determine whether these costs meet the narrowly-defined set of costs that qualify as eligible. Moreover, as shown in Section III, BellSouth fails to demonstrate that thousands-block number pooling results in a net cost increase rather than a net cost reduction.⁸ Instead, as contemplated by the Commission’s presumption that no additional recovery is justified, all facts point to a net cost reduction that would wipe out entirely BellSouth’s claimed exogenous adjustments. At the very least, its obvious by understatement of the offsetting savings, BellSouth makes clear that its proposed rate increases far exceed the costs it might potentially be entitled to recover under the *Third NRO Order*. Finally, as shown in Section IV, permitting BellSouth’s tariff to go into effect would be inconsistent with the Commission’s prior orders and the statutory requirement for competitively neutrality.

⁸ See *BellSouth/Qwest Suspension Order* ¶ 6; *Sprint Suspension Order*, ¶ 6.

BACKGROUND

As AT&T set forth in its recent petitions to reject similar tariffs filed by Qwest, BellSouth⁹ and Sprint,¹⁰ as established in the Commission's NRO docket generally, and as succinctly articulated in the *Third NRO Order*, the Commission has unambiguously established that "the costs of numbering administration are generally and appropriately treated as an ordinary cost of doing business."¹¹ The Commission embodied this and many other factors in its clear articulation of a presumption against cost recovery for thousands-block pooling activities.¹² Such a presumption is not surprising given the cost recovery already provided for in connection with local number portability ("LNP").¹³ For this reason, and others, the Commission concluded that

⁹ AT&T respectfully requests that its prior submissions in the BellSouth/Qwest proceeding resulting in the *BellSouth/Qwest Suspension Order* be incorporated into the current proceeding. *Bell South Tariff FCC No. 1 Transmittal No. 623, Qwest Tariff FCC No. 1 Transmittal No. 120*, WCB/PPD No. 02-08, Petition of AT&T Corp. (Mar. 25, 2002).

¹⁰ AT&T respectfully requests that its prior submissions in the Sprint proceeding resulting in the *Sprint Suspension Order* be incorporated into the current proceeding. *See Sprint Local Telephone Companies Tariff FCC No. 3, Transmittal No. 192*, WCB/Pricing No. 02-10, Petition of AT&T Corp. (Apr. 11, 2002).

¹¹ *Third NRO Order* ¶ 37.

¹² *See Third NRO Order*, ¶ 39 ("Because recovery for numbering administration expenses is already included in basic LEC compensation, [] LECs seeking extraordinary recovery of thousands-block number pooling costs in the form of an exogenous adjustment to their price cap formula must overcome a rebuttable presumption that no additional recovery is justified.").

¹³ The Commission said, when discussing some of the preliminary thousands-block number pooling cost studies submitted by the ILECs that its, "preliminary review of these initial cost studies indicates that some carriers may have included costs that are inappropriate under the test for extraordinary recovery that we established in the *First Report and Order*. Some of the cost items included are very similar to cost claims rejected in the *LNP Tariff Investigation Orders*." *Third NRO Order*, ¶ 42 (citing Long-Term Number Portability Tariff Filings, Ameritech Operating Companies, et al., 14 FCC Rcd 11883 (1999); Long-Term Number Portability Tariff Filings, 14 FCC Rcd 11983 (1999) (collectively *LNP Tariff Investigation Orders*)).

“many of the costs associated with thousands-block number pooling are ordinary costs for which no additional or special recovery is appropriate.”¹⁴

BellSouth’s filing is, in numerous respects, flatly inconsistent with the Commission’s rulings. Prompt and unequivocal action by the Commission is necessary to address the many serious errors underlying BellSouth’s second national thousands-block number pooling access charge tariff. Accordingly, AT&T respectfully urges the Commission to *reject* or, at a minimum, suspend for five months and investigate the unsupported and inflated tariff rates for the reasons detailed below.

I. BELLSOUTH HAS NOT MET ITS BURDEN OF PROOF THAT IT IS SEEKING EXOGENOUS COST RECOVERY SOLELY FOR ELIGIBLE COSTS.

BellSouth’s filing fails to acknowledge, much less overcome, the Commission’s rebuttable presumption that it is not entitled to recovery of thousands-block number pooling costs. As the Commission has made clear in its previous *Suspension Orders*, the *Third NRO Order’s* rebuttable presumption “places a relatively high burden on the carriers to demonstrate that costs incurred by implementing [thousands-block number pooling], as discussed in the order, exceed the savings.” *BellSouth Suspension Order* ¶ 5; see also *Texaco Inc. v. FERC*, 148 F.3d 1091, 1098-99 (D.C. Cir. 1998) (party seeking to overcome rebuttable presumption did not meet “heavy burden of persuasion”). Indeed, the Commission established a highly specific three-part test to determine whether exogenous cost recovery would be appropriate, but BellSouth has not even proffered information addressing these factors. Furthermore, many of BellSouth’s claimed exogenous

¹⁴ *Third NRO Order* ¶ 25.

costs¹⁵ are fundamentally inconsistent with longstanding Commission precedents concerning the manner in which exogenous cost adjustments are to be determined and implemented. For all of these reasons, the Commission should reject (or at least suspend for five months and investigate) BellSouth's tariff.

A. Three-Part Test established in the Commission's Number Resources Optimization Proceeding

To be eligible for the extraordinary recovery, thousands-block number pooling costs must satisfy each of three criteria. "First, only costs that would not have been incurred 'but for' thousands-block number pooling are eligible for recovery. Second, only costs incurred 'for the provision of' thousands-block number pooling are eligible for recovery. Finally, only 'new' costs are eligible for cost recovery."¹⁶

The Commission has interpreted the first two criteria of the three-prong test as follows. "Only costs that were incurred 'for the provision of' thousands-block number pooling are eligible for recovery through this extraordinary mechanism, but these must also be costs that would not have been incurred 'but for' thousands-block number pooling. This means that only the demonstrably incremental costs of thousands-block number pooling may be recovered."¹⁷ "[C]osts specifically incurred in the narrowly defined thousands-block pooling functions are those incurred specifically to identify, donate and receive blocks of pooled numbers, to create and populate the regional databases and carriers' local copies of these databases, and to adapt the procedures for

¹⁵ This omission is particularly problematic given the Commission's very recent reiteration of the presumption in the *Suspension Orders*. See *BellSouth/Qwest Suspension Order*, ¶ 5; *Sprint Suspension Order*, ¶ 5.

¹⁶ *Third NRO Order* ¶ 43.

querying these databases and for routing calls so as to accommodate a number pooling environment.”¹⁸

By contrast, “costs that carriers incur as an ‘incidental consequence’ of thousands-block number pooling implementation are not incurred specifically in the provision of narrowly defined thousands-block pooling functions. Thus, costs incurred to adapt other systems to the presence of thousands-block number pooling are not incurred for the provision of thousands-block number pooling and are ineligible for recovery. Examples of such systems include those for maintenance, repair, billing and other functions not directly involved in the provision of thousands-block number pooling. These systems are not part of the provisioning of thousands-block number pooling. Similarly, costs incurred to facilitate the continued provision of other services in the presence of number pooling are an ‘incidental consequence’ and are not eligible for recovery. “For example, database-related costs such as those involving service control points (SCPs) that support services such as third-party billing or calling card calls are not eligible even though these costs would not have been incurred but for number pooling.”¹⁹

The third prong of the Commission’s test requires that thousands-block number pooling costs must also be “new” costs in order to qualify for exogenous recovery.²⁰ This means that costs incurred prior to the implementation of thousands-block number pooling are ineligible embedded investments already subject to recovery through standard mechanisms. “Costs are not ‘new’ and thus are ineligible for extraordinary treatment as thousands-block number pooling

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¹⁷ *Third NRO Order* ¶ 44.

¹⁸ *Third NRO Order* ¶ 44.

¹⁹ *Third NRO Order* ¶ 45.

charges, if they previously were incurred, are already being recovered under ordinary recovery mechanisms, or are already being recovered through the number portability end-user charge or query charge.”²¹

B. Exogenous Cost Recovery Rules

BellSouth must also establish that the costs it seeks to recover are truly “exogenous,” as the Commission has consistently applied that concept. The Commission has repeatedly found that “[e]xogenous costs are in general those costs that are triggered by administrative, legislative, or judicial action beyond the control of the carriers.”²² This basic principle – that exogenous costs are costs “beyond control of the carrier” by virtue of a legal mandate – has been the central tenet underlying all of the Commission’s exogenous cost determinations. As a result, it is well-established that the cost of a Commission mandate cannot be an exogenous cost if such cost was incurred by the LEC *before* the implementation of the Commission’s mandate.

The Commission’s *Third NRO Order* is consistent with these longstanding principles of exogenous cost recovery. With respect to thousands-block number pooling, “[t]he Commission concluded that costs incurred by carriers to meet state-mandated thousands-block

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²⁰ *Third NRO Order* ¶ 46.

²¹ *Third NRO Order* ¶ 46.

²² *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd. 6786, 6807 (¶ 166) (1990) (“*LEC Price Cap Order*”). See also 47 C.F.R. § 61.45(d) (exogenous cost changes “shall be limited to those cost changes that the Commission shall permit or require by rule, rule waiver, or declaratory ruling”); see also *LEC Price Cap Order* ¶ 189 (“we must also deny the LECs an automatic flow-through for all extraordinary costs,” in order to maintain proper incentives to plan for and cope with unforeseen changes).

number pooling are intrastate costs and should be recovered under state cost recovery mechanisms.”²³ Thus, any implementation costs incurred *prior* to the Commission’s imposition of a federal number pooling mandate would not qualify for treatment as an exogenous cost in federal cost recovery mechanisms, and the Commission’s conclusions are in accord with the historical application of exogenous recovery mechanisms.²⁴

II. COST ANALYSES

As demonstrated herein, BellSouth claims exogenous cost adjustments that are not eligible for recovery under the Commission’s three-prong test. Further, BellSouth has not provided sufficient cost justification and other support to permit a full assessment of the reasonableness of its proposed exogenous cost adjustment.²⁵ Moreover, BellSouth seeks recovery of costs associated with non-recoverable numbering administration or LNP functions – potentially

²³ 3rd NRO ¶ 24; *See also* 3rd NRO ¶ 26 “[T]he Commission determined that states exercising delegated authority over number pooling must develop their own cost recovery mechanisms. Development and implementation of state cost recovery is necessary to ensure that carriers recover the costs of advance implementation of thousands-block number pooling attributable to the state jurisdiction.” Citing *1st NRO Order* ¶ 197 (“Until national thousands-block number pooling is implemented and a federal cost recovery mechanism authorized, states may use their current cost recovery mechanisms to ensure that the carriers recover the costs of thousands-block number pooling implementation and administration in the meanwhile. Costs incurred by carriers to implement state-mandated thousands-block number pooling are intrastate costs and should be attributed solely to the state jurisdiction.”)

²⁴ It is clear that without exogenous recovery, BellSouth more than recovered any costs incurred in 2000. *See* FCC Interstate Rate of Return Summary, Years 1991 through 2000, which reports that BellSouth earned rates of return of 22.61%.

²⁵ *See* 47 C.F.R. § 61.49(a) (“[e]ach price cap tariff filing must be accompanied by supporting materials sufficient to calculate required adjustments . . . pursuant to the methodologies provided in . . . § 61.45 . . .”).

setting the stage for double recovery.²⁶ At the very least, it is evident that BellSouth's proposed rate increase far exceeds the costs that might appropriately be recovered under the *Third NRO Order*.

1. Timing

The Commission has expressly held that costs incurred prior to the implementation of national thousands-block number pooling are *not* eligible for exogenous cost treatment.²⁷ Yet, contrary to the Commission's explicit instructions, BellSouth has included costs incurred beginning on January 1, 2000,²⁸ months before the first Commission released its first order addressing the issue of thousands-block number pooling.²⁹ These costs are unambiguously excluded from recovery, and BellSouth's tariff should be rejected or suspended for five months on this basis alone.

As provided for in Rule 61.45(d), BellSouth cannot claim exogenous costs the before they are "required" or "permitted by" Commission rule. As the Commission's NRO Orders unambiguously show, pre-national implementation and state mandated thousands-block pooling costs are specifically excluded from national recovery mechanism.

²⁶ See *Third NRO Order*, ¶ 46.

²⁷ See *Third NRO Order*, ¶ 46 ("Costs are not 'new,' and thus are ineligible for extraordinary treatment as thousands-block number pooling charges, if they previously were incurred, are already being recovered under ordinary recovery mechanisms, or are already being recovered through the number portability end-user charge or query charge.")

²⁸ *BellSouth Telecommunications, Inc.*, Transmittal No. 629, *Description and Justification, Appendix B*, p. 1 (Apr. 26, 2002).

²⁹ The Commission did not adopt a mandatory requirement for thousands-block pooling until the *First NRO Order*, which was released on March 31, 2000. *In the Matter of Numbering Resource Optimization*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 99-200, FCC 00-104, released March 31, 2000, ¶ 116 *et seq.* ("*First NRO Order*").

We find that it is reasonable to bar recovery of costs incurred by incumbent LECs prior to number pooling implementation and conclude that permitting embedded investments to be eligible thousands-block number pooling costs would permit recovery of costs that are already subject to recovery through standard mechanisms.

First NRO Order ¶219.

The first possible date the Commission's Orders could be construed to "permit" recovery would be June 18, 2001, the date the National Thousands-Block Pooling Administrator was chosen.³⁰ In the *First NRO Order*, the Commission stated that, "We believe based on the readiness of thousand block number pooling standards and technical requirements, that thousands-block number pooling can be implemented on a national level within nine months of the selection a national thousands-block number Pooling Administrator."³¹ Therefore, the selection of the National Pooling Administrator could reasonably be construed as beginning of a Commission mandate or implicit date that Commission rule "permitted" the potential of cost recovery because of its expectation that work would commence to meet the mandated thousands-block pooling implementation date nine months later.³²

As a result, any thousands-block number pooling costs BellSouth incurred prior to the selection of a National Pooling Administrator are *not* eligible for exogenous cost treatment. Yet, BellSouth seeks recovery of such costs through its Transmittal No. 629. This violation of the Commission's cost recovery rules by itself warrants rejection or suspension of the Tariff. Even for costs incurred after June 18, 2001, the Commission made clear that costs incurred prior to the

³⁰ See *Federal Communications Commission's Common Carrier Bureau Selects NeuStar, Inc. as National Thousands-Block Number Pooling Administrator*, CC Docket No. 99-200, News Release (June 18, 2001) ("NeuStar News Release").

³¹ *First NRO Order*, ¶ 156

Commission-established implementation date of March 15, 2002, for the national number pooling, program³³ must be disallowed unless they were incurred *solely* for national pooling, as opposed to state pooling trials.³⁴

2. State Trials

Under the Commission's cost recovery rules, any legitimate thousands-block number pooling costs associated with state trials must be recovered in state proceedings.³⁵ Yet, BellSouth has not demonstrated that any of its early expenditures were incurred solely to meet the federal mandate.³⁶ Although BellSouth claims, without support, that it has excluded costs associated with state-ordered number pooling trials associated with eight NPAs (Florida NPAs 305, 561, 904 and 954, North Carolina NPAs 336, 704 and 919, and Tennessee NPA 615).³⁷ A report of the National and State Trial Pool Administrator, NeuStar reveals there are seven other NPAs in the BellSouth territory that implemented number pooling in a state trial prior to March 15, 2002, the national

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³² NeuStar News Release (stating that the rollout of national pooling would commence in March 2002).

³³ *"The Common Carrier Bureau Announces the First Quarter Schedule for National Thousands-Block Number Pooling,"* Public Notice, DA 01-3019, released December 28, 2001, Attachment A. *See also Third NRO Order* n.19.

³⁴ *Third NRO Order* ¶¶ 26-29.

³⁵ "When carriers have incurred costs directly related to thousands-block number pooling at the state level prior to the implementation of national thousands-block pooling, the advancement costs of state-specific deployment should be attributed to the state jurisdiction. . . .any costs attributable to advance deployment at the state level will be subject to state recovery mechanisms. *Third NRO Order* ¶ 28.

³⁶ BellSouth's inclusion of costs dating back to 2000 demonstrates that BellSouth is attempting to recover state, not federal, pooling costs, with interest. *See BellSouth Transmittal No. 629, Description and Justification, Appendix B* p.1.

³⁷ BellSouth Transmittal No. 629, *Description and Justification, Appendix B* p.1.

thousands-block pooling implementation date.³⁸ Thus, there were five Florida state trial NPAs not listed by BellSouth,³⁹ and two North Carolina state trial NPAs.⁴⁰ BellSouth's apparent failure to remove these state pooling costs from its national cost recovery figures clearly violates the exogenous cost criteria delineated by the Commission. BellSouth's tariff should be rejected or suspended for five months on this basis alone. At the very least, BellSouth's failure to provide sufficient evidence to demonstrate its full compliance with the Commission's cost recover rules warrants rejection or suspension of its tariff.⁴¹

3. Operational Support Systems

a. CNUM & TN Tracker

The Commission's rules permit recovery only of those costs that are incurred *solely* for the provision of thousands-block number pooling. Yet, BellSouth seeks recovery of numerous Operational Support System ("OSS") costs that fail this standard. AT&T identified in its petition to reject or suspend BellSouth's initial tariff a number of OSS costs that were not incurred solely in connection with thousands-block number pooling. In addition to those costs, BellSouth improperly seeks to recover costs associated with Telcordia's Customer Number Manager

³⁸ See Exhibit 1 NeuStar's Pooling Time Line by State, taken from; http://www.nationalpooling.com/timeline_by_state/index.htm

³⁹ Exhibit 1, maintained by the official Pool Administrator, shows that in addition to the four Florida NPAs shown in BellSouth Transmittal No. 629, *Description and Justification, Appendix B* p.1, the 386, 754, 772, 813 and 941 NPAs were implemented as state pooling trials before the national implementation date: 386 implemented 7/16/01; 754 implemented 1/22/01; 772 implemented 9/17/01; 813 implemented 1/14/02; and 914 implemented 2/11/02.

⁴⁰ Exhibit 1, maintained by the official Pool Administrator, shows that in addition to the three North Carolina NPAs shown in BellSouth Transmittal No. 629, *Description and Justification, Appendix B* p.1, the 980 and 984 NPAs were implemented as state pooling trials before the national implementation date: 980 implemented 9/14/01; and 984 implemented 10/26/01.

(“CNUM”) and Telephone Number Tracking System (“TN Tracker”). As an authorized user of CNUM and TN Tracker, AT&T knows from first hand experience that these two OSS packages provide a wide array of telephone number management functionalities. Indeed, these systems handle numbering inventory needs and have great utility even without using their number pooling capabilities.⁴² For example, AT&T will be using both CNUM and TN Tracker to address the *First NRO Order’s* requirements for numbering category compliance,⁴³ NRUF reporting,⁴⁴ as well as number pooling demands. Yet, despite the wide and varied functions performed by these systems, BellSouth seeks to recover a substantial amount of the costs for these systems⁴⁵ as exogenous costs, even though such recovery is specifically reserved for items solely and directly related to the implementation of thousands-block number pooling.⁴⁶

b. Reporting Systems and NRUF Requirements

BellSouth also seeks exogenous recovery for costs that it has previously represented to the Commission were incurred in order for BellSouth to meet its NRUF filing obligations. These costs

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⁴¹ 47 CFR § 61.49.

⁴² See Exhibit 2, Telcordia Customer Number Manager informational sheet.

⁴³ See *First NRO Order*, ¶¶ 10-35 (adopting uniform definitions for six categories of numbers: assigned, intermediate, reserved, aging, administrative, and available).

⁴⁴ See *First NRO Order*, ¶¶ 40-41. The Commission mandated the use of the Numbering Resource Utilization and Forecast (“NRUF”) Report to efficiently monitor and manage numbering use.

⁴⁵ AT&T cannot divine what portion of BellSouth’s claimed exogenous costs are attributable to these Telcordia systems given the lack of specific evidence in the BellSouth Transmittal No. 629, *Description and Justification*. However, BellSouth attributes over \$17.5 million dollars worth of its exogenous costs to Telcordia line items, specifically, Lines 26 and 53 on changes in Vendor Input workpaper – Redacted Version.

⁴⁶ BellSouth Transmittal No. 629, *Description and Justification*, Appendix B (electronic page numbers) pp. 51 & 53.

are ineligible for exogenous cost recovery and BellSouth's tariff should be rejected or suspended for five months on this basis alone.

Shortly after the Commission's *First NRO Order* was released, carriers began preparations for NRUF filings. On July 24, 2000, BellSouth filed a petition requesting "a partial waiver and an extension of time" regarding its first NRUF filing.⁴⁷ In that filing, BellSouth explained that its legacy systems required augmentation and replacement in order for BellSouth to meet its NRUF requirements, specifically noting that its COSMOS and ATLAS systems were "not designed to accommodate the kind of data collection and reporting contemplated by the Commission in the *NRO Order*."⁴⁸ BellSouth further explained that it was adding the replacement SWITCH, CNUM and TN Tracker systems in order to comply with the Commission's new reporting requirements. BellSouth's prior representations to the Commission thus established that its deployment of CNUM, TN Tracker and SWITCH in 2000 was to meet its NRUF reporting obligations, and not "solely" for purposes of thousands-block number pooling.

Although this deployment of CNUM, TN Tracker and SWITCH was not *solely* related to thousands-block number pooling – and thus ineligible for exogenous cost recovery – BellSouth nevertheless seeks exogenous cost recovery for these systems.⁴⁹ The inclusion of these OSS costs

⁴⁷ See Exhibit 3, BellSouth Telecommunications, Inc. Emergency Petition For Partial Waiver And Extension Of Time in CC Docket 99-200, dated July 24, 2000..

⁴⁸ Exhibit 3, p. 3.

⁴⁹ BellSouth Transmittal No. 629, *Description and Justification, Appendix B* (electronic page numbers) pp. 51, 53, 55 & 65. Again AT&T cannot divine exactly what portion of these systems BellSouth is claiming are appropriate for exogenous cost recovery because the supporting information is insufficient and what may be available is redacted.

clearly violates the exogenous cost criteria delineated by the Commission, therefore, BellSouth's tariff should be rejected or suspended for five months on this basis alone.⁵⁰

c. Porting

BellSouth further seeks to recover costs it purportedly will incur in porting contaminated numbers back to itself.⁵¹ Since BellSouth does not provide adequate support for this proposition their claim is perplexing because intraservice provider porting is a fundamental part of LNP and is needed to comply with the Commission's requirement that a carrier manage numbers on a per rate center as opposed to a per switch basis.⁵² Prior to the *First NRO Order*, carriers were entitled to obtain separate numbering resources (CO codes) for each switch in each rate center without regard to the level of utilization of resources on any other switch in the rate center.⁵³ After the *First NRO Order* carriers were required to manage on a rate center basis. To do this they need to be able to port block of numbers assigned to from one switch to another.⁵⁴ Thus, the capability for a carrier to port numbers to itself predates the implementation of mandatory thousands-block pooling and therefore the functionality cannot be new or legitimately claimed as an exogenous

⁵⁰ Even if BellSouth were claiming exogenous cost recovery only for partial system upgrades, which cannot be ascertained from its insufficiently supported filing, the Commission has explicitly disallowed recovery for these costs. See *First NRO Order* ¶ 217 where the Commission sets the prohibitions on LNP cost recovery for general upgrades or adaptation of current systems to LNP as the model for prohibitions on thousands-block pooling exogenous cost recovery.

⁵¹ BellSouth Transmittal No. 629, *Description and Justification, Attachment B*

⁵² See *First NRO Order*, ¶¶ 104-05.

⁵³ See *First NRO Order*, ¶ 85.

⁵⁴ See , ¶ 33 ("*Second NRO Order*") (urging carriers to pursue intra-rate center and intra-company porting of numbers to share numbers among switches).

cost.⁵⁵

d. Special Pooling Center

BellSouth seeks to recover costs associated with a separate Block Assignment Center (“BAC”) that will be responsible for the administration of all number issues related to number pooling.⁵⁶ Other carriers, including AT&T, however, have not found it necessary or efficient to separate pooling from mainline number administration functions. BellSouth’s specialized pooling center therefore appears inefficient versus integration with mainline number administration. Moreover, it is unclear whether savings associated with the obtaining of resources as blocks instead of NXXs have been offset against the costs associated with BellSouth’s specialized center.

4. Overhead Costs

The Commission in its *First Report and Order* noted that only the portion of a carrier’s joint costs that are demonstrably incremental to the costs carriers incur as a result of implementing thousands-block number pooling can be claimed as exogenous costs.⁵⁷ The Commission found that LECs, must “demonstrate that “only those incremental overhead costs” that are specific to thousands-block number pooling have been claimed.⁵⁸ Specifically, “[c]arriers that apply an incremental overhead allocation factor must include a detailed explanation of the method used to calculate the factor as well as the method used to arrive at the estimated overhead

⁵⁵ The only porting capability possibly related specifically to thousands-block pooling is the automatic porting of contaminated numbers when a block is donated. In all events, BellSouth has not supplied adequate support to determine whether it is making such a claim, much less to justify cost recovery.

⁵⁶ BellSouth Transmittal No. 629, *Description and Justification, Appendix B* p. 3.

⁵⁷ See *First Report and Order*. ¶ 221.

⁵⁸ See *First Report and Order*. ¶ 223.

amount.”⁵⁹ The Commission reiterated this caution with respect to the costs that could be claimed in its *Third NRO Order* -- thousands-block number pooling “is, in principle, an enhancement of existing numbering administration procedures, the costs of which are already being recovered through existing mechanisms.”⁶⁰ The requirement that exogenous cost claims must be incremental to embedded LEC costs is further clarified by the Commission reiteration that thousands-block number pooling costs, in order to qualify for exogenous cost treatment, “must be new.”⁶¹ Costs that are not new include costs that “previously were incurred, are already being recovered under ordinary recovery mechanisms, or are already being recovered through the number portability end-user charge or query charge.”⁶²

Contrary to the Commission’s express limitation of recovery to “new” costs, BellSouth includes an unsupported 4.42 percent overhead factor in all of their exogenous cost calculations.⁶³ BellSouth describes its overhead factor as including expenses such as plant operations, administration, general engineering and motor vehicle expense. These costs span the activities of the entire BellSouth enterprise including activities such as executive and planning, accounting and legal. These costs have, by definition, been previously incurred and will continue to be incurred. Therefore, these are not incremental to thousands-block number pooling and cannot be claimed as “new.”

⁵⁹ See *First Report and Order* ¶ 225.

⁶⁰ See *Third Report and Order* ¶ 38.

⁶¹ See *Third Report and Order* ¶ 46.

⁶² See *Third Report and Order* ¶ 46.

⁶³ BellSouth Transmittal No. 629, Factors Expense, Page 1 of 1.

BellSouth also includes an additional overhead factor equal to 17 percent in its “Telcordia” costs.⁶⁴ AT&T cannot determine what these “Telcordia” overhead costs could possibly include. At bottom, BellSouth’s claims of overhead costs do not comply with the Commission’s explicit rules for cost recovery and therefore must be disallowed.⁶⁵ The inclusion of these overhead costs violates both the requirement that any claimed overhead be incremental and that any appropriate overhead claim be supported with a detailed explanation. BellSouth’s tariff should be rejected or suspended for five months on this basis alone.

In sum, BellSouth has failed to establish the costs it seeks to recover are incurred only for narrowly defined thousands-block number pooling functions as provided for by the Commission’s three-part test. BellSouth, therefore, has failed to overcome the rebuttable presumption against exogenous recovery for its alleged thousands-block number pooling costs.

III. BELLSOUTH FAILS TO DEMONSTRATE THOUSANDS-BLOCK NUMBER POOLING RESULTS IN A NET COST INCREASE RATHER THAN A NET COST REDUCTION

Apart from the deficiencies identified above, BellSouth has not established that it will experience a net cost increase rather than a cost reduction as a result of implementing thousands-block number pooling, as required under the Commission’s *Third NRO Order*.⁶⁶ Specifically, BellSouth has not shown that the costs for which it seeks exogenous treatment “exceed the costs that would have been incurred had the carrier engaged in an area code split, overlay or other numbering relief [including replacement of the existing NANP] that would

⁶⁴ See Telecordia, 03/2002, Page 1 of 1.

⁶⁵ “Carriers that apply an incremental overhead allocation factor must include a detailed explanation of the method used to calculate the factor as well as the method used to arrive at the estimated overhead amount.” *First NRO Order* ¶ 225.

otherwise have been required in the absence of pooling.” As the Commission has unambiguously held, only costs that constitute a *net increase* qualify for exogenous price cap treatment.⁶⁷

A. Delay in NANP Exhaust

As the Commission previously observed, huge expenditures estimated to be in the range of \$50 billion to \$150 billion on a LEC industry-wide basis will eventually be required to redo the entire North American Numbering Plan (“NANP”).⁶⁸ Despite the enormous savings that the ILEC industry stands to realize as a result of thousands-block number pooling and BellSouth’s own advocacy on this precise point,⁶⁹ BellSouth failed to offset any savings against the thousands-block number pooling implementation costs for which they seek exogenous treatment. Nor does BellSouth address the Commission’s specific holding, in the *BellSouth/Qwest Suspension Order*, that “the scope of cost savings discussed in the [Third NRO] Order must be resolved prior to

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⁶⁶ See *Third NRO Order* ¶ 40; See also *BellSouth/Qwest Suspension Order* ¶ 6.

⁶⁷ See *Third NRO Order* ¶ 40.

⁶⁸ See *id.* n.8, citing NANC Meeting Minutes, February 18-19, 1999, at 13 (In 1999, some industry members suggested that the cost to expanding the NANP by adding one or more digits could be between \$50 to \$150 billion.)

⁶⁹ “There is sufficient time remaining in the life of the North American Numbering Plan for [the] Commission to assert a leadership role in developing uniform national number optimization strategies that attack the drivers of number exhaust in the manner envisioned by the Commission.” *Numbering Resource Optimization, et al.*, CC Docket Nos. 99-200, *et al.*, BellSouth Comments at I (July 30, 1999).

“The NANP Exhaust Study by Lockheed Martin CIS cannot be ignored. There was never any doubt prior to passage of the 1996 Act that the NANP would eventually exhaust, and planning efforts centered around NANP expansion predate the 1996 Act. There can be no doubt the exhaust dates projected for the NANP at the beginning of this decade have been accelerated by the competitive forces that have been enabled by mid-decade state and federal legislations.” *Id.* at 10.

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permitting rates to take effect.” *Id.* at 3. These savings are potentially substantial, but ignored by BellSouth. With total disregard for the *BellSouth/Qwest Suspension Order*, BellSouth did not include *any* cost savings associated with delay of NANP exhaust. Had BellSouth properly netted the eligible costs of thousands-block number pooling implementation against its tremendous overall cost saving benefits, BellSouth may not be entitled to any exogenous adjustment whatsoever.

B. Methodology for Quantifying Savings from Delayed NANP Exhaust

Although precise cost estimates of expanding the North American Numbering Plan are not available, it *is* possible to construct a plausible, conservative estimate based on the known costs of Local Number Portability and NPA relief and include estimation factors that would permit a sensitivity analysis.

1. Replacement Costs

Industry experts generally believe that NANP Expansion (“NANPE”) will be more expensive than LNP. This is not surprising, because NANPE would likely require changing the format of every telephone number from 10 to 12 digits (as proposed by the industry), which would affect every system that uses telephone numbers in a way that was not necessarily the case for LNP.⁷⁰ Nonetheless, the costs of implementing LNP can be used as a starting point for estimating the costs of NANPE. LNP costs, which were vetted in the Commission’s LNP cost recovery

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“It is unrealistic to expect numbering resources within NANP to last forever, and it is unconscionable for regulators not to educate consumers to the realities of number exhaust.” *Id.* at p. 12)

⁷⁰ For example, although LNP changes the way in which the number to be routed is derived (the LRN is used instead of the dialed number), it does not change the basic mechanism of

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proceeding, readily lend themselves to such estimates, because they are carrier-specific and are limited to network costs (*i.e.*, unlike NANC estimates, they do not include a component estimating the social cost of NANPE).

Therefore, to estimate the cost of implementing NANPE in BellSouth's region, one would start with BellSouth's LNP costs, which BellSouth put at \$604,688,462 dollars in the LNP cost recovery proceeding.⁷¹ NANPE, however, would involve not only network element changes (as with LNP), but also converting every existing number in every NPA and educating the public (typically a cost born by the carriers making material service changes) in a way similar to (but more complicated than) that required for an area code split or overlay. Since these translation changes and customer education costs would be required in each NPA, it is reasonable to model BellSouth's costs as also including the equivalent of area code relief in each NPA. BellSouth's territory currently includes 64 NPAs, although there will likely be more at the time of NANP exhaust. BellSouth's submission for thousands-block number pooling cost recovery shows an average cost for area code relief as approximately \$2 million per NPA;⁷² after multiplying by 64 NPAs, the total additional cost would be \$128 million. Together, these components, based on BellSouth's submitted costs for changes much less fundamental than NANPE, suggest a minimal NANPE cost to BellSouth of \$732 million or NANPEreplace-cost = \$732M.

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routing on the first 3 or 6 digits or the central offices to which those prefixes are assigned for routing purposes. Likewise, LNP does not alter the format of directory listings.

⁷¹ BellSouth Telecommunications, Inc. Long-Term Telephone Number Portability Description and Justification, Transmittal No. 502, April 30, 1999.

⁷² BellSouth Telecommunications, Inc. Revised Thousands Block Number Pooling Description and Justification, Transmittal No. 629, April 26, 2002.

There is also a way to reasonably estimate these costs in the future accounting for technological change factors. We can account for the effect of changing technology by adopting a factor (Ttechnological-change-factor) to reflect the expectation of lower (or higher) costs in the future.

2. Length of NANP Exhaust Deferral

The Commission has noted that NANPA's estimated point of exhaust for the ten-digit NPA numbering plan has moved from 2006-2012 to 2025-2034.⁷³ For purposes of this methodology, the mid-point of each range can be used as an estimated date (which can always be adjusted in a later proceeding). Thus, the implementation of THOUSANDS-BLOCK NUMBER POOLING has staved off the need for NANPE from 2009 (= Ypre-tbnp-replacedate) to 2030 (= Zpost-tbnp-replacedate). A basic simple present value calculation can be used to calculate deferral of costs into the future. If we use a discount rate of 11.25%, which is what the FCC considers when calculating the LECs' cost of capital, the present value of \$1 spent in 2009 is 47.4 cents, while the present value of \$1 spent in 2030 is 5.1 cents. Thus the value of deferring a \$1 expenditure by 21 years (specifically, from 2009 to 2030) is 42.4 cents or 42.4% (a net present value factor ("NPVfactor")) of the "NANPEreplace-cost" times "Ttechnological-change-factor." Thus, there is a potential method for estimating NANP exhaust deferral savings that is relatively simple.

BellSouth failed to establish that it will experience a net cost increase as a result of thousands-block number pooling. As such, it fails to qualify for exogenous recovery under the Commission's standards.

⁷³ *Third NRO Order* at n.2 (dated December 2001); See also <http://www.atis.org/pub/clc/inc/nanpe/020107029.doc>

IV. PERMITTING THESE RATES TO GO INTO EFFECT WOULD BE INCONSISTENT WITH THE COMMISSION'S PRIOR ORDERS AND WITH THE STATUTE

BellSouth's latest tariff filing is also at odds both with the Commission's prior numbering administration orders and with the statute. The Commission has consistently indicated that, based on the evidence presented to date, the "extraordinary" costs of implementing thousands-block number pooling, if any, should be minimal. For example, the Commission concluded that "many of the costs associated with thousands-block number pooling are ordinary costs for which no additional or special recovery is appropriate."⁷⁴ Indeed, the Commission repeatedly indicated that it expected that implementation of thousands-block number pooling would result in an overall *decrease* in costs for the LECs.⁷⁵ The Commission also expressly found, after reviewing the LECs' studies attempting to estimate the costs of implementation, that "some carriers may have included costs that are inappropriate under the test for extraordinary recovery that we established in the *First Report and Order*," and that "[s]ome of the cost items included are very similar to cost claims rejected in the *LNP Tariff Investigation Orders*."⁷⁶ As a result, the Commission established a "rebuttable presumption that *no* additional recovery is justified."⁷⁷

The Commission reiterated these findings in its orders suspending Sprint's, Qwest's and BellSouth's tariffs. As the Commission noted, the *Third Report and Order* required price cap LECs to overcome a rebuttable presumption that no additional recovery is justified, and that this "requirement places a relatively high burden on the carriers to demonstrate that costs incurred by

⁷⁴ *Third NRO Order*, ¶ 25.

⁷⁵ *See id.*, ¶ 40 ("[u]nlike other mandates of the Commission, thousands-block number pooling may reduce network costs"); *see also id.*, ¶ 25.

⁷⁶ *Id.* ¶ 42.

⁷⁷ *Id.* ¶ 39 (emphasis added).

implementing [thousands-block number pooling], as discussed in the order, exceed the savings.”⁷⁸

The Commission also reiterated that carriers “must show that the costs for which extraordinary treatment is sought exceed the costs that would have been incurred had the carrier engaged in an area code split, overlay, or other numbering relief that would otherwise have been required in the absence of pooling.”⁷⁹ As the Commission correctly found in the suspension orders, these carriers did not submit evidence to establish that the costs of implementation in fact exceeded the benefits, according to the criteria laid out in the *Third NRO Order*.⁸⁰

Given that BellSouth’s latest tariff filing makes no attempt to provide the showing that was missing in its original filing, BellSouth is essentially seeking a repudiation of the *Third NRO Order* and the Commission’s prior suspension orders. Contrary to BellSouth’s apparent belief, the Commission is not free to disregard its rules and prior findings in the context of a particularized rate investigation. As the D.C. Circuit has noted, if an agency could simply ignore its own rules in individual cases, “administrative agencies could effectively repeal legislative rules . . . , by adjudication, without providing affected parties any opportunity to comment on the proposed changes.” *AFGE v. FLRA*, 777 F.2d 751, 759 (D.C. Cir. 1985). That is in effect what BellSouth is asking the Commission to do in this truncated, 15-day suspension proceeding – to effectively overrule the *Third NRO Order* by ignoring the inquiries that the Commission deemed necessary to any accurate determination whether a carrier in fact had extraordinary costs that could be included in an exogenous adjustment.

⁷⁸ *BellSouth/Qwest Suspension Order* ¶ 5.

⁷⁹ *Id.* ¶ 6 (quoting *Third Report and Order* ¶ 40).

⁸⁰ See *BellSouth/Qwest Suspension Order* ¶ 7; *Sprint Suspension Order*, ¶ 7.

In addition, BellSouth's proposed exogenous cost adjustments would also violate the statute. As AT&T and others have indicated previously, there is no sound basis for including any thousands-block number pooling implementation costs in access charges, and placing these costs on access ratepayers violates Section 251(e)(2), which requires numbering administration costs to be "borne by all telecommunications carriers on a competitively neutral basis." *See* 47 U.S.C. § 251(e)(2). Even if the Commission's analysis in the *Third NRO Order* were correct, however, the Commission's previous conclusion with respect to competitive neutrality was based on the assumption that the exogenous cost adjustments would be very small or nonexistent. *See, e.g., Third NRO Order* ¶¶ 38-40. Permitting the LECs to recover thousands-block number pooling costs by increasing access charges by tens or even hundreds of millions of dollars would *not* be "competitively neutral," as the statute requires. Forcing IXCs to bear "extraordinary" thousands-block number pooling costs of that magnitude would create serious market distortions and would place IXCs at a competitive disadvantage relative to other carriers (such as wireless carriers).⁸¹

⁸¹ Indeed, wireless carriers bear far more responsibility for number exhaust than IXCs. IXCs (*qua* IXCs) rarely ever request or obtain numbers, whereas the explosive growth of wireless carriers is one of the principal reasons that measures like THOUSANDS-BLOCK NUMBER POOLING must be taken to conserve numbers.

CONCLUSION

For the reasons stated above, the Commission should reject or, at a minimum, suspend for five months and investigate BellSouth's filing.

Respectfully submitted,

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May 3, 2002

CERTIFICATE OF SERVICE

I, Christine Kachurak, do hereby certify that on this 3rd day of May, 2002, a copy of the foregoing "Petition of AT&T Corp." was served by facsimile and U.S. first class mail, postage prepaid, on the parties named below.

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