

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

_____)	
In the Matter of)	
)	
Sprint Local Telephone Companies)	Transmittal No. 200
)	
Verizon Telephone Companies)	Transmittal No. 207
_____)	

AT&T CORP. PETITION TO REJECT OR SUSPEND TARIFFS

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SUMMARY

In its *Third Numbering Resource Optimization Order*, the Commission made clear that costs that could be recovered by incumbent LECs for implementation of thousands-block number pooling (“TBNP”) would be minimal, if there were any at all. The Commission also established a stringent, three-part test to ensure that only costs directly associated with TBNP – and net of all savings resulting from adoption of TBNP – could be recovered. Sprint’s tariff filing seeking recovery of almost \$75 million and Verizon’s seeking over \$92 million clearly do not seek recovery of minimal, extraordinary costs, and just as clearly fail to comply with the Commission’s rules and orders. They each should accordingly be rejected. At a minimum, each tariff raises substantial questions of lawfulness that cannot be dispelled in the highly abbreviated “streamlined” process afforded by this proceeding.

As shown in Section I, Sprint and Verizon fail to carry their burden of proof to demonstrate that they are seeking exogenous recovery solely for eligible costs. Indeed, as shown in Section II, this is Sprint’s second attempt to meet the Commission’s cost recovery test, yet it has submitted a tariff materially identical to the earlier tariff that was suspended because it raised substantial questions of lawfulness.

Section III’s detailed analysis of Sprint’s and Verizon’s tariffs shows a significant percentage of the costs in each filing are unambiguously ineligible because they occur before the Commission established technical standards and mandated pooling, thereby rendering both tariffs unlawful. Certain other costs are not eligible because they have already been recovered through Local Number Portability (“LNP”) cost recovery mechanisms or other numbering administration procedures. 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.

As shown in Section IV, both Sprint and Verizon fail to demonstrate that thousands-block number pooling results in a net cost increase rather than a net cost reduction. Instead, all facts point to a net cost reduction that would wipe out entirely both Sprint's and Verizon's claimed exogenous adjustments. At the very least, because they have understated the offsetting savings, it is evident that Sprint and Verizon's proposed rate increases far exceed the costs they might potentially be entitled to recover under the *Third NRO Order*.

Finally, as shown in Section IV, permitting these tariffs to go into effect would be inconsistent with the Commission's prior orders and the statutory requirement for competitive neutrality. The Commission therefore should reject each of the filings or, at a minimum, suspend each one pending investigation.

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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 filings by Sprint seeking \$74.9 million and Verizon seeking \$93.7 million in alleged exogenous extraordinary costs incurred for the implementation of thousands-block number pooling.

It is clear on the face of the instant filings that they both fail to comply with the Commission's orders and accordingly should be rejected.³ At a minimum, the tariffs raise

¹ *In the Matter of Numbering Resource Optimization*, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, FCC 01-362, rel. December 28, 2001 ("*Third NRO Order*").

² Order, *In the Matter of Sprint Local Telephone Companies Tariff* FCC No. 3 Transmittal No. 192, WCB/Pricing No. 02-10, DA 02-898, rel April 18, 2002 ("*Sprint Suspension Order*"); Order, *In the Matter of Bell South Tariff* FCC No. 1 Transmittal No. 623, *Qwest Tariff* FCC No. 1 Transmittal No. 120, WCB/PPD No. 02-08, DA 02-747, rel April 1, 2002 ("*BellSouth/Qwest 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 afforded 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, Sprint’s filing to recover number pooling costs totaling almost \$75 million, and Verizon’s filing totaling over \$93 million, certainly do not seek recovery of minimal, extraordinary costs. Nor could inclusion of these amounts as exogenous cost adjustments to access charges be deemed 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.⁶ As the Commission made abundantly clear, the presumption could only be rebutted if “extraordinary” pooling implementation costs met a stringent three-part test and exceeded all the savings generated through pooling.

(footnote continued from previous page)

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 47 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 *Third NRO Order* ¶ 39; *See Suspension Order* ¶¶ 2, 5.

As shown in Section I, Sprint and Verizon fail to carry their burden of proof and to demonstrate that they are seeking exogenous recovery solely for eligible costs. Section II shows Sprint's current tariff filing is materially identical to Sprint's earlier tariff filing that was suspended because it raised substantial questions of lawfulness.⁷ As a threshold matter, Section III's detailed analysis of Sprint and Verizon's tariffs show a significant percentage of the costs in each filing are unambiguously ineligible because they were incurred before technical standards and the mandate for pooling were adopted, thereby rendering both tariffs unlawful. Certain other costs are not eligible because they have already been recovered through Local Number Portability ("LNP") cost recovery mechanisms or other numbering administration procedures. 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 IV, both Sprint and Verizon fail to demonstrate that thousands-block number pooling results in a net cost increase rather than a net cost reduction.⁸ Instead, all facts point to a net cost reduction that would wipe out entirely both Sprint's and Verizon's claimed exogenous adjustments. At the very least, by understating the offsetting savings, it is evident that Sprint's and Verizon's proposed rate increases far exceed the costs they might potentially be entitled to recover under the *Third NRO Order*. Finally, as shown in Section V, permitting these tariffs to go into effect would be inconsistent with the Commission's prior orders and the statutory requirement for competitive neutrality.

BACKGROUND

⁷ See Sprint Suspension Order ¶ 8.

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

As AT&T set forth in its recent petitions to reject similar tariffs filed by Qwest, BellSouth⁹ and Sprint,¹⁰ the Commission has repeatedly and unambiguously established that “the costs of numbering administration are generally and appropriately treated as an ordinary cost of doing business.”¹¹ The Commission reiterated this general rule in its establishment 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 “many of the costs associated with thousands-block number pooling are ordinary costs for which no additional or special recovery is appropriate.”¹⁴

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*)).

¹⁴ *Third NRO Order* ¶ 25.

Both Sprint and Verizon's filing are, 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 their national thousands-block number pooling access charge tariffs. Accordingly, AT&T respectfully urges the Commission to *reject* or, at a minimum, suspend and investigate the unsupported and inflated tariff rates for the reasons detailed below.

I. NEITHER SPRINT NOR VERIZON HAS MET ITS BURDEN OF PROOF THAT THEY IT IS SEEKING EXOGENOUS COST RECOVERY SOLELY FOR ELIGIBLE COSTS.

Sprint and Verizon fail to acknowledge, much less overcome, the Commission's rebuttable presumption that they are 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 neither Sprint nor Verizon has even proffered information addressing these factors. Furthermore, many of Sprint and Verizon's claimed exogenous costs¹⁵ are fundamentally inconsistent with longstanding Commission precedent 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) both Sprint's and Verizon's tariffs.

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.

A. The Three-Part Test for Thousands-Block Pooling Recovery

To be eligible for the extraordinary recovery allowed under the Commission's Third NRO Order, 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 to mean that "[o]nly costs that were incurred 'for the provision of' thousands-block number pooling are eligible for recovery through this extraordinary mechanism." Moreover, recoverable costs are restricted to those "that would not have been incurred 'but for' thousands-block number pooling," so that "only the demonstrably incremental costs of thousands-block number pooling may be recovered."¹⁷ As the Commission has made clear, "[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 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

¹⁶ *Third NRO Order* ¶ 43.

¹⁷ *Third NRO Order* ¶ 44.

¹⁸ *Third NRO Order* ¶ 44.

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 investments already subject to recovery through standard mechanisms. “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.”²¹

B. Exogenous Cost Recovery Rules

Sprint and Verizon must also establish that the costs they seek to recover are truly “exogenous,” as the Commission has consistently applied that concept. The Commission has repeatedly held that “[e]xogenous costs are in general those costs that are triggered by

¹⁹ *Third NRO Order* ¶ 45.

²⁰ *Third NRO Order* ¶ 46.

²¹ *Third NRO Order* ¶ 46.

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, “the Commission concluded that costs incurred by carriers to meet state-mandated thousands-block 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.

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).

²³ *Third NRO Order* ¶ 24; See also *Third NRO Order* ¶ 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 *First 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.”)

II. SPRINT'S CURRENT TARIFF IS MATERIALLY INDISTINGUISHABLE FROM THE ONE THE COMMISSION FOUND TO BE UNLAWFUL ONLY TWO MONTHS AGO.

Slightly more than one month after requesting special permission to withdraw its suspended tariff set for investigation (Transmittal No. 192),²⁴ Sprint submitted a second, materially indistinguishable and equally flawed tariff. While the current filing decreases the costs Sprint believes are eligible for recovery by a scant \$3.5 million or 4.4% percent,²⁵ the filing remains facially noncompliant with Commission orders and does not correct the infirmities of Sprint's recently suspended Transmittal No. 192. Accordingly, this Sprint 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 Sprint's current tariff suffers from many of the same flaws as the prior Sprint, Qwest, and first BellSouth thousands-block number pooling tariffs that were recently suspended and set for investigation. The Commission's and other affected industry participant's resources should not be wasted reviewing facially flawed tariff transmittals, which Sprint and other incumbents apparently will continue to file – especially given the expedited review schedule imposed by the “streamlined” review requirements.²⁶

²⁴ See Sprint Local Telephone Companies letter, *Application No. 25*, to Secretary, Federal Communications Commission, dated May 14, 2002, requesting special permission to waive the requirements of Sections 61.58 and 61.59 of the Commission's Rules in order to file revisions to Sprint's Tariff F.C.C. No. 3 on not less than one day's notice.

²⁵ The meager 4.4% reduction is less than one-third the percentage reduction between the first and second Bellsouth tariffs. BellSouth Transmittal No. 623 claimed approximately \$74 million and BellSouth Transmittal No. 629 claimed approximately \$64 million; a 13.51% reduction.

²⁶ The burden on reviewing parties is exacerbated by the fact that oppositions price cap ILECs' annual price cap filings to Qwest's direct case in WCB Docket No. 02-117 are due on the same date.

Sprint's Transmittal No. 200 fails to address some of the very issues the Commission cited as causes for suspending its prior thousands-block number pooling tariff Transmittal No. 192. At bottom, Sprint'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 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 Sprint tariff. Indeed, there can be no reasoned basis for the Commission to depart from its existing rulings by letting this tariff take effect.

III. COST ANALYSES

It appears that both Sprint and Verizon included costs in their exogenous adjustments that are not eligible for recovery under the Commission's three-prong test.²⁷ Further, neither Sprint nor Verizon provide sufficient cost justification or other support to permit a full assessment of the reasonableness of their proposed exogenous cost adjustments. Moreover, Sprint and Verizon seek recovery of costs associated with non-recoverable numbering administration or LNP functions – potentially setting the stage for double recovery.²⁸ At the very least, it is evident that both Sprint's and Verizon's proposed rate increases far exceed the costs that might appropriately be recovered under the *Third NRO Order*.

1. Timing

²⁷ See Exhibit 1; Sprint Costs Improperly Included in its Transmittal No. 200.

²⁸ See *Third NRO Order* ¶ 46.

The Commission expressly held that costs incurred prior to the implementation of national thousands-block number pooling are *not* eligible for exogenous treatment.²⁹ It would be unlawful, therefore, for Sprint or Verizon to recovery exogenous costs that were incurred *before* the Commission even ordered the method of numbering resource optimization carriers must implement and specified the technological standards and requirements that would be necessary to effectuate the Commission's mandate. Yet, both Sprint and Verizon attempt to recover unambiguously ineligible costs – some incurred two years prior to the effective date of the Commission's decision mandating thousands-block number pooling and selecting the standards and requirements necessary for implementation, and others incurred three years prior to the Commission's designation of a national pooling administrator.

In the *First NRO NPRM*³⁰ the Commission sought comment on whether alternative numbering resource optimization methodologies should be pursued while only tentatively concluding to implement thousands-block pooling.³¹ The *First NRO Order* established, for the first time, thousands-block number pooling as a mandatory nationwide requirement.³² The

²⁹ 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.”)

³⁰ *In the Matter of Numbering Resource Optimization*, Notice of Proposed Rulemaking in CC Docket No. 99-200, FCC 99-122, rel. June 2, 1999 (“*First NRO NPRM*”).

³¹ See *First NRO NPRM* ¶ 142; “As part of our inquiry, we considered (1) thousands-block number pooling; (2) individual telephone number (ITN) pooling; (3) and unassigned number porting (UNP) as possible number pooling strategies for implementation on a nationwide basis” *In the Matter of Numbering Res. Optimization, Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574 ¶ 116 (2000) (“*First NRO Order*”). See also *First NRO Order* ¶ 119, citing consideration of non-regulatory incentive-based mechanisms.

³² See *First NRO Order* ¶ 122.

Commission also sought comment in the *First NRO NPRM* on a variety of mutually exclusive technical requirements for pooling, but importantly, did not tentatively conclude or adopt any method.³³ Again, the *First NRO Order* adopted, for the first time, the technical standards and requirements that carriers must follow for the newly-mandated thousands-block number pooling.³⁴ Therefore, the effective date of the *First NRO Order*, July 17, 2000, was the first time that carriers actually had a mandate to implement thousands-block pooling and all the technical requirements for necessary for implementation were in place.³⁵

Under Section 61.45(d) of the Commission's rules, neither Sprint nor Verizon may claim exogenous treatment for costs before they are "required" or "permitted by" Commission rule.³⁶ As the Commission's *First NRO Order* unambiguously establishes, pre-national implementation and state mandated thousands-block pooling costs are specifically excluded from the national recovery mechanism.³⁷ Moreover, recovery under the national thousands-block pooling recovery mechanism is entirely inappropriate for expenditures that ILECs made before the

³³ "We seek comment on whether we should adopt the T1S1.6 proposed technical requirements . . . or, in the alternative, whether we should direct the NANC to recommend technical standards . . . In addition, we seek comment on whether there are any technical issues . . . that have not been identified . . ." *First NRO NPRM* ¶ 178.

³⁴ See *First NRO Order* ¶¶ 181-183. In fact, The Industry Numbering Committee ("INC") Thousand Block Pooling Administration Guidelines were modified by Commission mandate such that INC 'fast tracked' the Pooling Guidelines update schedule so that they would be completed by June 20th 2000.

³⁵ The *First NRO Order* appeared in the Federal Register on June 16, 2000. See Numbering Resource Optimization, 65 Fed. Reg. 37, 703 (2000). The rules adopted in the *First NRO Order* (with the exception of one non-pooling related rule that was pending approval OMB approval) became effective July 17, 2000. See *id.*

³⁶ 47 C.F.R. § 61.45(d).

³⁷ *First NRO Order* ¶ 219 ("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").

technical requirements for pooling were established by the Commission.

The most reasonable date on which the Commission should allow recovery to begin is the date the National Thousands-Block Pooling Administrator was appointed; June 18, 2001.³⁸ While the Commission may have ordered thousands-block pooling in the *First NRO Order*, it plainly did not anticipate that carriers would start to incur costs until the Administrator was appointed. Specifically, in the *First NRO Order*, the Commission stated; “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 of a national thousands-block number Pooling Administrator.”³⁹ The selection of the Administrator should, therefore, be construed as the beginning of a Commission mandate or the implicit date that a Commission rule “permitted” the potential of cost recovery.⁴⁰

Alternatively, the absolute earliest date recovery could be allowed by the Commission is July 17, 2000, the effective date of the pooling mandates adopted in the *First NRO Order*.⁴¹ In fact, BellSouth, whose thousands-block number pooling cost recovery was recently allowed to go into effect, cited mid-year 2000 as the appropriate date to begin allowing exogenous

³⁸ *Federal Communications Commission’s Common Carrier Bureau Selects NeuStar, Inc. as National Thousands-Block Number Pooling Administrator*, CC Docket No. 99-200, News Release (rel. June 18, 2001) (“NeuStar News Release”).

³⁹ *First NRO Order* ¶ 156.

⁴⁰ NeuStar News Release (stating that the rollout of national pooling would commence in March 2002).

⁴¹ See 65 Fed. Reg. 37, 703 (2000). See also *First NRO NPRM* ¶ 158, where the North American Numbering Council (“NANC”) estimated that all required preliminary tasks and thousands-block number pooling implementation could be achieved within ten to nineteen months from a Commission Order. Nineteen months from mid-2000 was January 2002, three months prior to the mandated commencement of national thousands-block number pooling. Both Sprint and Verizon (then BellAtlantic) were active participants on the NANC when these estimates were created.

cost recovery for thousands-block number pooling.⁴² Consequently, therefore, no legal or technical basis exists to permit costs prior to July 17, 2000 to be recovered.

Sprint claims approximately *Redacted* million dollars or *Redacted* of its total costs before the pooling administrator was selected and approximately *Redacted* million dollars or *Redacted* of its total costs before the *First NRO Order* was effective and technical standards established.⁴³ Verizon claims approximately \$44.0 million dollars or 47.0% of its total costs before the pooling administrator was selected and approximately \$24.9 million dollars or 26.6% of its total costs before the *First NRO Order* was effective and technical standards established.⁴⁴ The inclusion of these substantial and materially significant costs – some two years prior to the absolute earliest date allowable for cost recovery – warrants rejection of both carrier’s exogenous cost recovery tariffs.

2. Verizon Impermissibly Inflated its Alleged Exogenous Costs

Verizon unjustifiably inflated its calculated recoverable thousands-block number pooling exogenous costs for Verizon-East by \$8.4 million and Verizon-West by \$1.1 million by

⁴² BellSouth asserted that proper cost recovery begins mid-year “after the Commission announced that [] pooling would be mandatory.” Reply of BellSouth telecommunications, Inc., *In the Matter of Bell South Tariff FCC No. 1 Transmittal No. 629*, filed May 7, 2002, ¶ 7. (Importantly, BellSouth’s standard mid-year accounting convention fails to exclude costs before the Commission’s mandate became effective or was released.)

⁴³ These estimates do not address the serious question of appropriateness of any claimed cost. Furthermore, since Sprint’s supporting information is insufficient to attribute actual costs per month, costs for a given year are assumed to be distributed equally across all months of the year they are allegedly incurred.

⁴⁴ These estimates do not address the serious question of appropriateness of any claimed cost. Furthermore, since Verizon’s supporting information is insufficient to attribute actual costs per month, costs for a given year are assumed to be distributed equally across all months of the year they are allegedly incurred.

converting them into a 2-year annuity using an 11.25% interest rate.⁴⁵ While allowing the ILECs to recover thousands-block number pooling costs over a two-year period through exogenous increase in price cap ceilings that apply to access charges, the Commission did not permit the ILECs to treat these costs as an annuity instead of normal exogenous costs. Once a cost is designated as an exogenous cost, the price cap rules allow only an increase in the price cap ceilings that is equal to the exogenous cost.⁴⁶ It is conceivable that ILECs may over or under-recover the exogenous costs over a given period of time due to changes in demand and other factors but such considerations play no part in price cap formulas. Similarly, ILECs cannot treat exogenous costs as a debt that is owed to them by their customers. The Commission should disallow the \$9.1 million in interest that Verizon added to its thousands-block number pooling exogenous costs.

3. OSS Systems

The Operations Support Systems (“OSS”) expenses inadequately described by Sprint include unspecified changes to systems that range from Customer Service and Customer Record applications, to Service Order Entry and Audit Process systems.⁴⁷ Sprint describes a minimal number of systems specifically designed for the provision of thousands-block number pooling. As in Sprint’s Transmittal No. 192, the systems Sprint describes (albeit without requisite detail) often appear to be operating at customer-specific or telephone number-specific levels.⁴⁸

⁴⁵ Verizon Transmittal 207, D&J, Section 1.5.3, WP Exogenous Cost-East and WP Exogenous Cost-West.

⁴⁶ See 47 C.F.R. 61.45 (d).

⁴⁷ See Exhibit 1; Sprint Costs Improperly Included in its Transmittal No. 200.

⁴⁸ See *Sprint Suspension Order*’s discussion of “whether all operations support systems (OSS) costs claimed by Sprint are eligible for recovery”. Id at ¶ 7; See also *BellSouth/Qwest Suspension Order*’s discussion of lawfulness of BellSouth and Qwest’s proposed OSS cost recovery elements. Id. at ¶ 9.

In the *Sprint Suspension Order*, the Commission found a number of items included by Sprint in Transmittal No. 192 raised substantial questions of lawfulness and warranted investigation. Specifically the Commission questioned, “whether Sprint’s Number Provisioning Administration Center (NPAC) cost analysis [was] unreasonable.”⁴⁹ Remarkably, Sprint’s current Transmittal No. 200 reduces claims for LTD-NPAC expenses by only a token 0.03% from Transmittal No. 192.⁵⁰ Clearly, Sprint’s Transmittal No. 200 does not address some of the very reasons the Commission suspended and set for investigation the prior Transmittal No. 192.

Other number optimization requirements such as Sequential Number Assignment ("SNA") mandates, or Intra-Service Provider porting could be the major reason to modify Sprint’s OSS's rather than thousands-block number pooling. AT&T reiterates, in this pending Transmittal No. 200 proceeding, its past comments on Sprint’s Transmittal No. 192, that the CODARS process must have been dramatically altered to accommodate Commission-ordered changes in number categories, block contamination in support of SNA implementation, and multiple switch provisioning to ensure high utilization of numbering resources. Thousands-block number pooling drives none of the modifications required to accommodate these functions, but each of the changes, required for other functions, could allow for a related redesign for thousands-block number pooling. Without understanding the breadth of the changes to systems undertaken as a whole, it is impossible to know if thousands-block number pooling was the cost causer or just a convenient field change made during a major numbering-driven system overhaul. Again, Sprint has not demonstrated that its costs claimed for OSS systems adaptation and maintenance are either

⁴⁹ *Sprint Suspension Order*, ¶ 7.

⁵⁰ Sprint Transmittal No. 200, Description and Justification, Chart 1B, line 37.

for the provision of thousands-block number pooling or are a direct cost of pooling.⁵¹

Verizon similarly fails to justify its claims for recovery of OSS costs. The Verizon Description and Justification provides only a cursory view of OSS such that no conclusions can be drawn on the systems affected or the extent to which those changes may have been required due to Number Pooling.⁵² Verizon's various "Figure 1" appendices to its Description and Justification, however, provide a number of examples of questionable Number Pooling cost origination and improper cost causation conclusions in a variety of Verizon systems.⁵³ For example, the TN Tracker system is shown as providing data for "utilization reports," but is also used by carriers to produce semi-annual NRUF reports.⁵⁴ Similarly, Verizon seeks recovery of costs associated with modifying the SWITCH system to protect blocks from further contamination, even though this is a function required to comply with prior FCC orders on Sequential Number Assignment.⁵⁵

At bottom, Sprint and Verizon fail to establish that the costs they seek to recover are incurred only for narrowly defined thousands-block number pooling functions as provided for by the Commission's three-part test. Both Sprint and Verizon, therefore, failed to overcome the rebuttable presumption against exogenous recovery for their alleged thousands-block number pooling costs.

IV. SPRINT AND VERIZON FAIL TO DEMONSTRATE THOUSANDS-BLOCK NUMBER POOLING RESULTS IN A NET COST INCREASE RATHER THAN A NET COST REDUCTION

⁵¹ See *Third NRO Order* ¶¶ 43-46.

⁵² Verizon Transmittal No. 207, Description and Justification, pp. 10-11.

⁵³ See Exhibit 2; Verizon Costs Improperly Included in its Transmittal No. 207.

⁵⁴ See Verizon Transmittal No. 207, Description and Justification, Verizon-East Figure 1, Appendix A: TBNP Filing (BNTR6172.wk4), p. 3 of 13.

⁵⁵ See Verizon Transmittal No. 207, Description and Justification, Verizon-East Figure 1, Appendix A: TBNP Filing (BNTR6172.wk4), p. 6 of 13.

Apart from the deficiencies identified above, both Sprint and Verizon failed to establish that they 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*.⁵⁶ Specifically, neither Sprint nor Verizon has 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 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.⁵⁷

A. Verizon Manipulates Allocations To Reduce Savings

In stark contrast to all other thousands-block number pooling tariffs, Verizon has apportioned the cost savings from deferring NPA relief *between* the Federal (interstate) and State (intrastate) jurisdictions, but seeks to recover *all* its costs using the Federal cost recovery mechanism. Thus, although Verizon calculated total cost savings of \$2 million for Verizon-East and \$1.3 million for Verizon-West, it allocated only \$563,000 and \$239,000 of cost savings, respectively, to the Federal interstate jurisdiction.⁵⁸ Since Verizon has allocated 100% of its thousands-block number pooling exogenous costs to the Federal interstate jurisdiction as allowed

⁵⁶ See *Third NRO Order* ¶ 40; See also *BellSouth/Qwest Suspension Order* ¶ 6 and *Sprint Suspension Order* ¶¶ 6-7.

⁵⁷ See *Third NRO Order* ¶ 40.

⁵⁸ See Verizon Transmittal 207, WP NPA Relief Cost-East and NPA Relief Cost-West.

by the Commission,⁵⁹ it must allocate 100% of its cost savings to the Federal interstate jurisdiction as well.

B. Delay and Avoidance of Area Code Splits and Overlays

Although the Sprint and Verizon included savings from delay and avoidance of area code splits and overlays⁶⁰ as a result of implementing thousands-block number pooling, the costs they claim to have avoided are significantly out of step with those claimed by the rest of the industry. For example, Qwest and Bell South have the highest claimed average cost per area code split or overlay for ILECs filing for thousands-block number pooling cost recovery. Sprint, on the other hand, claims that its avoided costs are less than one-tenth (an astonishingly low 8.4%) of the average area code split or overlay cost claimed by Qwest and BellSouth.⁶¹ Verizon likewise claims that its average avoided costs are about one-fifth (a surprisingly low 21.2%) of the average area code split or overlay cost claimed by Qwest and BellSouth.⁶²

It is highly unlikely that Sprint and Verizon's actual costs incurred for implementing an area code split or overlay can be only a fraction of the average cost that both BellSouth and Qwest incur for exactly the same work. Because these costs are used to compute

⁵⁹ See *Third NRO Order*, ¶ 3.

⁶⁰ Costs to implement area code splits and overlays would include, but are not limited to, educating consumers industry-wide of these area code changes and notifying customers of these changes.

⁶¹ Sprint's cost claims are approximately twelve (12) times lower than the average cost of Qwest and BellSouth's claims. See Sprint transmittal No. 200, Exhibit 7, Number pooling cost savings.

⁶² Verizon's average cost claims are approximately five (5) times lower than the average cost of Qwest and BellSouth's claims. See Verizon Transmittal No. 207, Appendix A, NPA relief costs.

the offsetting savings -- and therefore a deduction from any potential cost recovery -- it appears that Sprint and Verizon have understated their costs for implementing an area code split or overlay.

C. 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”).⁶³ Despite the enormous savings that the ILEC industry stands to realize as a result of thousands-block number pooling both Sprint and Verizon failed to offset any savings against the thousands-block number pooling implementation costs for which they seek exogenous treatment. These savings are potentially substantial, but ignored by both Sprint and Verizon. Had Sprint and Verizon properly netted the eligible costs of thousands-block number pooling implementation against its tremendous overall cost saving benefits, neither may be entitled to any exogenous adjustment whatsoever.

At bottom, Sprint and Verizon inaccurately account for the required cost savings and therefore fail to establish they will experience a net cost increase as a result of thousands-block number pooling. They each therefore fail to overcome the rebuttable presumption against exogenous recovery for their alleged pooling costs. Both tariffs accordingly should be deemed unlawful and rejected, or at a minimum suspended and set for investigation.

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

Sprint and Verizon’s latest tariff filings are also at odds both with the Commission’s prior numbering administration orders and with the statute. The Commission has consistently

⁶³ 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.)

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.”⁶⁴ 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.⁶⁵ 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*.”⁶⁶ As a result, the Commission established a “rebuttable presumption that *no* additional recovery is justified.”⁶⁷

The Commission reiterated these findings in its orders suspending Sprint’s, Qwest’s and BellSouth’s tariffs. As the Commission noted, the *Third NRO Order* required price cap ILECs to overcome a rebuttable presumption that no additional recovery is justified, and this “requirement 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.”⁶⁸ 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

⁶⁴ *Third NRO Order*, ¶ 25.

⁶⁵ *See id.*, ¶ 40 (“[u]nlike other mandates of the Commission, thousands-block number pooling may reduce network costs”); *see also id.*, ¶ 25.

⁶⁶ *Id.* ¶ 42.

⁶⁷ *Id.* ¶ 39 (emphasis added).

⁶⁸ *BellSouth/Qwest Suspension Order* ¶ 5.

area code split, overlay, or other numbering relief that would otherwise have been required in the absence of pooling.”⁶⁹ 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*.⁷⁰

Given that Sprint’s latest tariff filing makes no attempt to provide the showing that was missing in its original filing, and Verizon does not attempt to make an initial showing, both carriers are essentially seeking a repudiation of the *Third NRO Order* and the Commission’s prior suspension orders. Contrary to Sprint and Verizon’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 Sprint and Verizon are asking the Commission to do – 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.

Sprint and Verizon’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. §

⁶⁹ *Id.* ¶ 6 (quoting *Third NRO Order* ¶ 40).

⁷⁰ *See BellSouth/Qwest Suspension Order* ¶ 7; *Sprint Suspension Order*, ¶ 7.

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 ILECs 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 IXC's to bear "extraordinary" thousands-block number pooling costs of that magnitude would create serious market distortions and would place IXC's at a competitive disadvantage relative to other carriers (such as wireless carriers).⁷¹

CONCLUSION

For the reasons stated above, the Commission should *reject* or, at a minimum, suspend and investigate both Sprint's and Verizon's tariff filings.

Respectfully submitted,

AT&T CORP.

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⁷¹ Indeed, wireless carriers bear far more responsibility for number exhaust than IXC's. IXC's (*qua* IXC's) 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.

June 24, 2002

CERTIFICATE OF SERVICE

I, Karen Kotula, do hereby certify that on this 24th day of June, 2002, a copy of the foregoing "AT&T Corp.'s Petition To Reject or Suspend Tariffs" was served by facsimile and U.S. first class mail, postage prepaid, on the parties named below.

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