

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

In the Matter of	)	
	)	
BellSouth Telecommunications, Inc.	)	
Tariff FCC No. 1	)	
Transmittal No. 629	)	<b>WCB/Pricing No. 02-15</b>
	)	

**APPLICATION FOR REVIEW OF AT&T CORP.**

Pursuant to Section 1.115 of the Commission's rules, AT&T Corp. ("AT&T") respectfully submits this application for review of the Wireline Competition Bureau's Order on Reconsideration, DA 02-1355, released June 7, 2002 ("*Reconsideration Order*"). The *Reconsideration Order* reversed the Bureau's earlier decision to suspend 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. The *Reconsideration Order* allows BellSouth to impose massive added charges on AT&T and other IXC's, without significant investigation, despite the Commission's previous determination that the costs of numbering administration should generally be treated as an ordinary cost of doing business and that there is a presumption *against* recovery of such costs.

AT&T asks the Commission to vacate the Bureau's *Reconsideration Order*. It is unambiguously clear that the BellSouth tariff raises substantial questions of lawfulness, *see* 47 C.F.R. § 1.115(b)(2)(i), and, as the Bureau originally found, it should be suspended during the course of a thorough review and investigation.

Immediate Commission review is particularly important here because of the substantial negative competitive impact of permitting BellSouth's tariff, and others like it, to take effect. Already, the Bureau has allowed tariffs filed by BellSouth and Sprint to go into effect, which together contain exogenous adjustments totaling almost \$140 million. Verizon's pending tariff seeks recovery of \$75 million in alleged pooling costs, and Qwest recently withdrew its \$92 million tariff (which it presumably will re-file soon).<sup>1</sup> Three hundred million dollars in exogenous adjustments, more than half of which will appear as increases in the access charges paid by AT&T and other interexchange carriers ("IXCs"),<sup>2</sup> is astonishing considering that the Commission's rules contain a rebuttable presumption against *any* extraordinary recovery of number pooling costs. Moreover, the incumbent local exchange carrier ("ILEC") tariffs impose massive costs on only one segment of the industry – IXCs – which places IXCs at a substantial competitive disadvantage relative to other types of carriers with whom they compete, particularly wireless carriers. These competitive disadvantages are especially inappropriate given that IXCs (as IXCs) rarely obtain numbers and thus (unlike wireless carriers) do not contribute to the problem of number exhaust in the first place.

For these reasons, the Commission should review the Bureau's decision to terminate the suspension and should reinstitute the investigation of BellSouth's facially unlawful tariff. More fundamentally, the deficiencies of BellSouth's tariff starkly confirm that the Commission should grant AT&T's petition for reconsideration of the Commission's decision in the *Third NRO*

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<sup>1</sup> Qwest's original filing remained at \$120 million although they suggested reductions of approximately \$28 million.

<sup>2</sup> In the case of BellSouth, almost all of its rate increases will be assessed to IXCs through PICC increases.

*Order*<sup>3</sup> to permit the recovery of pooling costs in access charges. See AT&T Petition for Reconsideration (filed May 6, 2002); 47 C.F.R. § 1.115(b)(2)(iii) (“the action involves application of a precedent or policy which should be overturned or revised”).

## INTRODUCTION AND SUMMARY

BellSouth’s thousands-block number pooling cost recovery tariff (Transmittal No. 629), which seeks approximately \$64 million in alleged exogenous costs, is facially noncompliant with Commission orders. The Commission has unambiguously established that “the costs of numbering administration are generally and appropriately treated as an ordinary cost of doing business.”<sup>4</sup> For this reason, the Commission established a presumption against *any* cost recovery for implementation of thousands-block number pooling.<sup>5</sup> 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.”<sup>6</sup> And as the Bureau itself previously acknowledged, the Commission’s orders “place[] a relatively high burden on the

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<sup>3</sup> *Numbering Resource Optimization*, CC Docket Nos. 96-98 and 99-200, Third Report and Order and Second Order on Reconsideration, 17 FCC Rcd. 252 (2001) (“*Third NRO Order*”).

<sup>4</sup> *Third NRO Order* ¶ 37.

<sup>5</sup> 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.”)

<sup>6</sup> *Third NRO Order* ¶ 25. Significant cost recovery is already provided for in connection with implementation of local number portability (“LNP”). As the Commission explained, in discussing some of the preliminary thousands-block number pooling cost studies submitted by the ILEC’s, “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, 14 FCC Rcd 11983 (1999) (collectively, “*LNP Tariff Investigation Orders*”)).

carriers” to demonstrate that any extraordinary costs for which recovery might be appropriate “exceed the savings” associated with thousands-block number pooling. *See BellSouth Telecommunications, Inc., Tariff FCC No. 1, Transmittal No. 629, WCB/Pricing No. 02-15, Order*, ¶ 6 (released May 10, 2002) (“*BellSouth Suspension Order*”).<sup>7</sup>

The Bureau initially got it right and suspended BellSouth’s tariff. The Bureau found that BellSouth’s transmittal “raises substantial questions of lawfulness and warrants an investigation.” *Id.* ¶ 7. The Bureau stated that these questions “include, but are not limited to” questions concerning whether BellSouth “adequately demonstrated that its cost to implement thousands-block number pooling exceeds the cost savings” and whether “all operations support system (OSS) costs claimed by BellSouth are eligible for recovery.” *Id.* The Bureau also noted that “BellSouth has not provided sufficient cost justification and other support to permit a full assessment of the reasonableness of the proposed charges.” *Id.* ¶ 8.

Notwithstanding the fact that BellSouth corrected none of these problems, the Bureau inexplicably did an abrupt about-face a month later in a terse order reconsidering and withdrawing the suspension. The Bureau stated that “we have analyzed the initial tariff and transmittal, corresponded with the parties, and examined supplemental data filed by BellSouth.” *Reconsideration Order* ¶ 3. Based on this information, the Bureau dismissed AT&T’s claims in a single sentence, concluding simply that BellSouth’s tariff “does not raise issues that warrant investigation.” *Id.*

The Commission should now vacate the Bureau’s *Reconsideration Order* and reinstate the Bureau’s original suspension order. BellSouth’s tariff contains numerous costs that are clearly excluded by the Commission’s *Third NRO Orders*, including, among other items:

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<sup>7</sup> *See also Texaco Inc., et. al. v. FERC*, 148 F.3d 1091, 1098-99 (D.C. Cir. 1998) (party seeking

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, the BellSouth filing is, for many of the same reasons, also flatly inconsistent with the Commission's general exogenous cost recovery rules. Indeed, the BellSouth filing ignores 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. BellSouth's filing 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 cost savings "offset" requirement, including a clear direction that filers must account for savings associated with delay of the North American Numbering Plan ("NANP") exhaust, BellSouth failed 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 continues to omit the savings attributable to the delay of the NANP exhaust altogether. As AT&T demonstrated, had BellSouth correctly accounted for these avoided costs, the savings offset would have completely offset its claimed exogenous adjustments.

In short, the BellSouth tariff plainly does not qualify for exogenous recovery under the Commission's established standards, and indeed, the obvious errors and omissions discovered in the course of "streamlined" review, coupled with a disregard of explicit

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to overcome rebuttable presumption did not meet "heavy burden of persuasion").

Commission rulings, warrant rejection of BellSouth's tariff; at the very least, the Commission should vacate the Bureau's decision to terminate the tariff's suspension and should require a full investigation, as the Bureau had originally ordered. The deficiencies and manifest competitive harms associated with BellSouth's tariff, moreover, confirm that the Commission should reconsider the *Third NRO Order* altogether and adopt a competitively neutral regime of thousands-block pooling cost recovery.

## **ARGUMENT**

### **I. BELLSOUTH'S TARIFF INCLUDES MYRIAD NUMBER POOLING COSTS THAT DO NOT QUALIFY FOR RECOVERY.**

BellSouth seeks "exogenous" cost treatment of its number pooling costs. 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."<sup>8</sup> 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 a cost cannot be an exogenous cost if it was incurred before the implementation of the Commission's mandate.

The *Third NRO Order* expressly reaffirmed these longstanding principles of exogenous cost recovery. For example, "[t]he Commission concluded that costs incurred by carriers to meet state-mandated thousands-block number pooling are intrastate costs and should

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<sup>8</sup>*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"); *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).

be recovered under state cost recovery mechanisms.”<sup>9</sup> 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.<sup>10</sup>

The Commission made clear in the *Third NRO Order* that, to be eligible for 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.”<sup>11</sup> “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.”<sup>12</sup>

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<sup>9</sup> *Third NRO Order* ¶ 24; *See also id.* ¶ 26 (“the 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”); *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, (“*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.”)

<sup>10</sup> 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 (reporting that BellSouth earned a rate of return of 22.61% in 2000).

<sup>11</sup> *Third NRO Order* ¶ 43; *see also id.* at ¶ 44 (“only the demonstrably incremental costs of thousands-block number pooling may be recovered”).

<sup>12</sup> *Third NRO Order* ¶ 46; *see also id.* ¶ 45.

BellSouth's exogenous cost adjustments reflect costs that are not remotely eligible for recovery under the Commission's three-prong test. Moreover, BellSouth has not provided cost justification and other support to permit a full assessment of the reasonableness of its proposed exogenous cost adjustment.<sup>13</sup> And BellSouth seeks recovery of costs associated with non-recoverable numbering administration or LNP functions – potentially setting the stage for double recovery.<sup>14</sup> 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*. The following discussion is not meant to be an exhaustive list of the flaws in BellSouth's filing; these are merely some of the deficiencies AT&T identified in the abbreviated period available to review BellSouth's filing, which was not supported with adequate documentation.

**A. BellSouth Improperly Seeks Recovery Of Costs Incurred Before The FCC's Mandate Requiring Thousands Block Number Pooling.**

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.<sup>15</sup> Yet, contrary to the Commission's explicit instructions, BellSouth has included costs incurred beginning on January 1, 2000,<sup>16</sup> months before the Commission released its first order

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<sup>13</sup> 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”).

<sup>14</sup> See *Third NRO Order*, ¶ 46.

<sup>15</sup> 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”).

<sup>16</sup> *BellSouth Telecommunications, Inc.*, Transmittal No. 629, *Description and Justification*, Appendix B, p. 1 (Apr. 26, 2002).



addressing the issue of thousands-block number pooling.<sup>17</sup> These costs are unambiguously excluded from recovery, and BellSouth's tariff should be rejected or suspended for five months on this basis alone.

BellSouth cannot, consistent with 47 C.F.R. § 61.45(d), claim exogenous costs incurred before they are "required" or "permitted by" Commission rule. As the Commission's *NRO Orders* plainly state, pre-national implementation and state mandated thousands-block pooling costs are specifically excluded from national recovery mechanism:

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.<sup>18</sup> In the *First NRO Order*, the Commission stated that, "[w]e 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."<sup>19</sup> Therefore, the selection of the National Pooling Administrator could reasonably be construed as the beginning

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<sup>17</sup> The Commission did not adopt a mandatory requirement for thousands-block pooling until the *First NRO Order*, which was released on March 31, 2000. *First NRO Order*, ¶ 116 *et seq.*

<sup>18</sup> 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").

<sup>19</sup> *First NRO Order*, ¶ 156. In all events, the earliest date for recovery should not be prior to July 17, 2000, the date of the *First NRO Order*.

of a Commission mandate or implicit date that Commission rule “permitted” the potential of cost recovery because of the Commission’s expectation that work would commence to meet the mandated thousands-block pooling implementation date nine months later.<sup>20</sup>

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 Commission-established implementation date of March 15, 2002, for the national number pooling program<sup>21</sup> must be disallowed unless they were incurred *solely* for national pooling, as opposed to state pooling trials.<sup>22</sup>

**B. BellSouth Improperly Seeks To Recover Costs From Modifications Of Operation Support Systems Not Attributable To Thousands Block Number Pooling.**

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.

**1. Reporting Systems and NRUF Requirements**

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<sup>20</sup> NeuStar News Release (stating that the rollout of national pooling would commence in March 2002).

<sup>21</sup> “*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* at ¶ 11, n.19.

<sup>22</sup> *Third NRO Order* ¶¶ 26-29.

BellSouth 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 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.<sup>23</sup> 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*."<sup>24</sup> BellSouth further explained that it was adding the replacement SWITCH system in order to comply with the Commission's new reporting requirements. BellSouth's prior representations to the Commission thus established that its deployment of SWITCH in 2000 was to meet its NRUF reporting obligations, and not "solely" for purposes of thousands-block number pooling.

Although this deployment of SWITCH was not *solely* related to thousands-block number pooling – and thus ineligible for exogenous cost recovery – BellSouth nevertheless seeks exogenous cost recovery for this system.<sup>25</sup> The inclusion of these OSS costs clearly violates the

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<sup>23</sup> See BellSouth Telecommunications, Inc., Transmittal No. 629, AT&T Corp. Petition to Reject or Suspend Tariff, Exhibit 3 ( Filed May 3, 2002 ).

<sup>24</sup> *Id.*, p. 3.

<sup>25</sup> BellSouth Transmittal No. 629, *Description and Justification, Appendix B* at pp. 51, 53, 55 & 65 (electronic page numbers). Again, BellSouth has not provided sufficient information to determine exactly what portion of this system BellSouth is claiming is appropriate for exogenous cost recovery.

exogenous cost criteria delineated by the Commission, and BellSouth's tariff should be rejected or suspended for five months on this basis alone.<sup>26</sup>

## **2. Porting**

BellSouth further seeks to recover costs it purportedly will incur in porting contaminated numbers back to itself.<sup>27</sup> Since BellSouth does not provide adequate support for this proposition, its 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.<sup>28</sup> 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.<sup>29</sup> After the *First NRO Order*, carriers were required to manage numbers on a rate center basis and thus to port blocks of numbers from one switch to another.<sup>30</sup> 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

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<sup>26</sup> 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 (highlighting the prohibitions on LNP cost recovery for general upgrades or adaptation of current systems to LNP as examples of prohibitions on thousands-block pooling exogenous cost recovery).

<sup>27</sup> BellSouth Transmittal No. 629, *Description and Justification, Attachment B*

<sup>28</sup> See *First NRO Order*, ¶¶ 104-05.

<sup>29</sup> See *First NRO Order*, ¶ 85.

<sup>30</sup> See *Numbering Resource Optimization*, CC Docket Nos. 96-98 and 99-200, Second Report and Order, Order on Reconsideration, 16 FCC Rcd. 306, ¶ 33 (2000) ("*Second NRO Order*") (urging carriers to pursue intra-rate center and intra-company porting of numbers to share numbers among switches).

cost.<sup>31</sup>

### **3. 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.<sup>32</sup> 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 obtaining resources as blocks instead of NXXs have been offset against the costs associated with BellSouth’s specialized center.

#### **C. BellSouth Improperly Seeks To Recover Overhead Costs.**

In its *First NRO Order*, the Commission noted that only the portion of a carrier’s overhead 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.<sup>33</sup> The Commission found that LECs must “demonstrate that only those incremental overhead costs” that are specific to thousands-block number pooling have been claimed.<sup>34</sup> 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

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<sup>31</sup> The only porting capability possibly related specifically to thousands-block pooling is the automatic porting of contaminated numbers when a block is donated. BellSouth has not supplied adequate support to determine whether it is making such a claim, much less to justify cost recovery.

<sup>32</sup> BellSouth Transmittal No. 629, *Description and Justification*, Appendix B at p. 3.

<sup>33</sup> See *First NRO Order*. ¶ 221.

<sup>34</sup> See *First NRO Order*. ¶ 223.

estimated overhead amount.”<sup>35</sup> The Commission reiterated this caution 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.”<sup>36</sup> Only “new” costs qualify for exogenous cost treatment.<sup>37</sup>

Contrary to the Commission’s express limitation of recovery to “new” costs, BellSouth includes an unsupported 4.42 percent overhead factor in all of its exogenous cost calculations.<sup>38</sup> 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 “overhead” costs are not incremental to thousands-block number pooling and cannot be claimed as “new.”

BellSouth also includes an additional overhead factor equal to 17 percent in its “Telcordia” costs.<sup>39</sup> It is impossible even to determine from BellSouth’s filings what these Telcordia “overhead” costs consist of. 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.<sup>40</sup> The inclusion of these overhead costs violates both the requirement that any

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<sup>35</sup> See *First NRO Order* ¶ 225.

<sup>36</sup> See *Third NRO Order* ¶ 38.

<sup>37</sup> See *Third NRO Order* ¶ 46.

<sup>38</sup> BellSouth Transmittal No. 629, Factors Expense, Page 1 of 1.

<sup>39</sup> See *Telecordia*, 03/2002, Page 1 of 1.

<sup>40</sup> “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

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 required by the Commission's rules. BellSouth, therefore, has failed to overcome the rebuttable presumption against exogenous recovery for its alleged thousands-block number pooling costs.<sup>41</sup>

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

Even if the exogenous number pooling costs that BellSouth claims did satisfy the Commission's exogenous cost rules and fit within the narrow categories of recoverable costs established in the *Third NRO Order*, BellSouth's filing would be facially defective, because BellSouth has ignored enormous cost *savings* that would offset completely the cost increases that it has identified.<sup>42</sup> BellSouth has not established – and could not possibly establish – that it will experience a net cost increase rather than a cost reduction as a result of implementing thousands-block number pooling. 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

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estimated overhead amount.” *First NRO Order* ¶ 225.

<sup>41</sup> AT&T also demonstrated that BellSouth was attempting to recover certain costs from state pooling trials that were properly recovered only from state cost recovery mechanisms. BellSouth claimed in response that such costs had been excluded from its calculations, but it did not provide enough underlying documentation for AT&T or the Commission to assess these assertions.

<sup>42</sup> See *Third NRO Order* ¶ 40; see also *BellSouth Suspension Order* ¶ 6.

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.<sup>43</sup>

In particular, implementation of thousands-block number pooling will substantially postpone the need to replace the North American Numbering Plan (NANP). Such a postponement unquestionably represents an enormous cost *savings* to BellSouth – a savings that greatly exceeds the costs of implementing thousands-block number pooling. Indeed, the Commission has previously observed that replacement of the NANP will require huge expenditures, estimated to be in the range of \$50 billion to \$150 billion on a LEC industry-wide basis.<sup>44</sup> As the Bureau noted in its original suspension order, BellSouth made no attempt to show that its cost of implementing number pooling would exceed its share of these substantial cost savings.<sup>45</sup> Had BellSouth properly netted the eligible costs of thousands-block number pooling implementation against its tremendous overall cost savings, BellSouth could not be entitled to any exogenous adjustment whatsoever.

Although precise estimates of the cost of expanding the NANP are not available, it is possible to construct a conservative estimate of the savings BellSouth will realize as a result of implementing thousands block number pooling. As discussed below, the Commission can take BellSouth’s estimated costs of implementing Local Number Portability and implementing NPA relief as a very conservative proxy for the costs of NANP expansion, adjust those figures

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<sup>43</sup> See *Third NRO Order* ¶ 40.

<sup>44</sup> See *id.* n.8, citing NANC Meeting Minutes, February 18-19, 1999, at 13 (in 1999, some industry members suggested that the cost to expand the NANP by adding one or more digits could be between \$50 to \$150 billion.)

<sup>45</sup> See *BellSouth Suspension Order* ¶ 7.



for expected technological advances, and then calculate the present value of those costs. Even under such a conservative measure, BellSouth's savings from staving off NANP expansion overwhelmingly outweigh the cost of thousands-block number pooling.

The cost of implementing local number portability and NPA relief are conservative proxies for the cost of NANP expansion. NANP expansion will involve (in part) network changes very similar to LNP, but LNP provides a conservative proxy, because industry experts generally believe NANP expansion will be significantly more expensive than LNP. This is not surprising, because NANP expansion 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 ways that would not necessarily be required for LNP.<sup>46</sup>

LNP costs, which were vetted in the Commission's LNP cost recovery proceeding, are readily estimable, because they are carrier-specific and are limited to network costs (*i.e.*, they do not include a component estimating the social cost of NANP expansion). Therefore, to estimate the cost of implementing NANP expansion in BellSouth's region, one would start with BellSouth's LNP costs, which BellSouth estimated to be \$604 million dollars in the LNP cost recovery proceeding.<sup>47</sup>

NANP expansion, however, would involve not only network 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

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<sup>46</sup> 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 routing on the first 3 or 6 digits or the central offices to which those prefixes are assigned for routing purposes – unlike what would happen with the addition of two more digits. Likewise, LNP does not alter the format of directory listings.

<sup>47</sup> BellSouth Telecommunications, Inc. Long-Term Telephone Number Portability Description

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;<sup>48</sup> 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 NANP expansion, suggest a minimum NANP expansion cost to BellSouth of \$732 million.<sup>49</sup>

These future cost savings must, of course, be converted to present value. The Commission has noted that the NANPA's estimated point of exhaust for the ten-digit NPA numbering plan has been postponed from 2006-2012 to 2025-2034.<sup>50</sup> For purposes of this methodology, the mid-point of each range can be used as an estimated date. Under that assumption, the implementation of thousands-block number pooling has staved off the need for NANP expansion from 2009 to 2030. With a discount rate of 11.25% (the Commission's approved ILEC cost of capital), the present value of \$1 spent in 2009 is 47.4 cents, while the

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and Justification, Transmittal No. 502, April 30, 1999.

<sup>48</sup> BellSouth Telecommunications, Inc. Revised Thousands Block Number Pooling Description and Justification, Transmittal No. 629, April 26, 2002.

<sup>49</sup> It is also possible to account for technological changes in the estimate of these costs. The Commission could account for the effect of changing technology by adopting a factor (technological-change-factor) in its model to reflect the expectation of lower (or higher) costs in the future.

<sup>50</sup> *Third NRO Order* at ¶ 1, n.2; see also <http://www.atis.org/pub/clc/inc/nanpe/020107029.doc>.

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 42.3 cents or 42.3%.

Any reasonable estimate of the benefits to BellSouth of postponing NANP expansion easily dwarf the “exogenous” costs BellSouth claims of implementing thousands-block number pooling. Accordingly, BellSouth has failed to establish that it will experience a net cost increase as a result of thousands-block number pooling, and therefore it fails to qualify for exogenous cost recovery under the Commission’s standards.

### **III. THE DEFICIENCIES AND COMPETITIVE HARMS ASSOCIATED WITH BELL SOUTH’S TARIFF CONFIRM THAT THE COMMISSION SHOULD RECONSIDER THE *THIRD NRO ORDER*.**

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. 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.<sup>51</sup>

That message clearly has not gotten through to the ILECs, who see streamlined access charge recovery as a unique opportunity to inflate their access charges with plainly inappropriate costs, thereby both unjustly enriching themselves and giving them an artificial and anticompetitive advantage against IXC rivals that must pay those charges. The Commission 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*

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<sup>51</sup> See *Third NRO Order*, ¶ 40 (“[u]nlike other mandates of the Commission, thousands-block

*Orders.*”<sup>52</sup> As a result, the Commission established a “rebuttable presumption that *no* additional recovery is justified.”<sup>53</sup>

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 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 implementing [thousands-block number pooling], as discussed in the order, exceed the savings.”<sup>54</sup> 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.”<sup>55</sup> 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*.<sup>56</sup>

This continuing ILEC misconduct and the impracticality of effectively policing their access tariff misbehavior provide yet additional confirmation that the Commission should not permit ILECs to recover *any* number pooling costs in access charges. As AT&T and others have previously demonstrated, there is no sound basis for including any thousands-block number

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number pooling may reduce network costs”); *see also id.*, ¶ 25.

<sup>52</sup> *Id.* ¶ 42.

<sup>53</sup> *Id.* ¶ 39 (emphasis added).

<sup>54</sup> *BellSouth Suspension Order* ¶ 6.

<sup>55</sup> *Id.*

<sup>56</sup> *See BellSouth Suspension Order* ¶ 8;

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); *see also* AT&T Petition for Reconsideration (filed May 6, 2002). Not only should the Commission grant this application for review and vacate the Bureau’s *Reconsideration Order*, it should also grant the pending petition for reconsideration and fashion a new cost recovery scheme that is competitively neutral.

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 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).<sup>57</sup>

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<sup>57</sup> 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.

## CONCLUSION

For the reasons stated above, the Commission should vacate the Bureau's  
*Reconsideration Order*.

Respectfully submitted,

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July 8, 2002