are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272, State Requirements, is amended by revising the listing for ''Oklahoma'' to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Oklahoma

The statutory provisions include:

Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statute 1997 Edition, effective August 30, 1996, sections 2–7–103, 2–7–108(A), 2–7–108(B)(1), 2–7–108(B)(3), 2–7–108(C), 2–7–110(B), 2–7–110(C), 2–7–111(A), 2–7–111(B) (except the last sentence and the phrase,'' recycling'' in the first sentence), 2–7–111(C)(2)(a) (except the phrase ''Except as provided in subparagraph b of this paragraph'' and the word ''recycling'' in the first sentence), 2–7–111(D), 2–7–111(E) (except the word ''recycling'' in the first sentence), 2–7–112, 2–7–116(B) through 2–7–116(F), 2–7–116(H)(2), 2–7–118(A), 2–7–124, 2–7–125 and 2–7–127.

Copies of the Oklahoma statutes that are incorporated by reference are available from West Publishing Company, 610 Opperman Drive, P. O. Box 64526, St. Paul, Minnesota 55164–0526.

The regulatory provisions include:

The Oklahoma Administrative Code, Title 252, Chapter 200, 1996 Edition, effective July 1, 1996: subchapter 1, sections 252:200–1–1(a) and 252:200–1–2; subchapter 3, sections 252:200–3–5 and 252:200–3–6; subchapter 5, sections 252:200–5–3 and 252:200–5–5; subchapter 7, sections 252:200–7–1 through 252:200–7–4; subchapter 9 (except 252:200–9–2, 252:200–9–6 and 252:200–9–7); subchapter 11, sections 252:200–11–1 (except the phrases ''or off-site recycling'' and ''(TSDRs)''), 252:200–11–3(a) (except the word ''recycling''), 252:200–11–3(b) through 252:200-11–3(d), 252:200–11–4(a)(1) (except the phrases ''Except as otherwise provided in this section'' and ''or recycling''), 252:200-11–4(a)(5) (except the phrase ''For the purposes of this section''), 252:200–11–4(b) through 252:200–11–4(e); and subchapter 13, sections 252:200–13–2 introductory paragraph, 252:200–13–2(1) and 252:200–13–2(2) first sentence.

The Oklahoma Administrative Code Title 252, Chapter 200, 1997 Supplement, effective June 2, 1997: subchapter 3, sections 252:200–3–1, 252:200–3–2 (except 252:200–3–2(1)) and 252:200–3–4(a) and 252:300–3–4(b)(4)–(15); subchapter 5, sections 252:200–5–1, 252:200–5–4 and 252:200–5–6; and subchapter 9, section 252:200–9–2.

Copies of the Oklahoma regulations that are incorporated by reference can be obtained from The Oklahoma Register, Office of Administrative Rules, Secretary of State, 101 State Capitol, Oklahoma City, Oklahoma 73105.

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[FR Doc. 99–21936 Filed 8–25–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CRF Part 52

[CC Docket No. 95–116; FCC 99–151]

Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Policy statement.

SUMMARY: This document addresses issues raised on reconsideration of the First Report and Order relating to interim number portability. First, the Commission affirms its earlier conclusion that it has the authority to establish cost recovery guidelines for interim number portability. Second, the Commission rejects claims that the cost recovery guidelines for interim number portability set forth in the *First Report and Order* are arbitrary and capricious, or constitute an unconstitutional taking. The Commission denies the request that these cost recovery guidelines be applied retroactively. The Commission also affirms its earlier decision to adopt general cost recovery guidelines for interim number portability while allowing states flexibility to continue using a variety of cost recovery approaches that are consistent with its guidelines. The Commission also clarifies issues relating to terminating access charges, billing system modifications, and certain cost recovery allocators, as each of these issues relates to interim number portability.

DATES: Effective September 27, 1999.

FOR FURTHER INFORMATION CONTACT: Rhonda Lien or Janet Sievert at (202) 418–1520, Competitive Pricing Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Fourth *Memorandum Opinion and Order on Reconsideration* in CC Docket No. 95–116, *In re Telephone Number Portability,* FCC 99–151, adopted June 23, 1999 and released July 16, 1999. The file in its entirety is available for inspection and copying during the weekday hours of 9:00 a.m. to 4:30 p.m. in the Commission's Reference Center, 445 12th St. SW., Room CY–A257, Washington DC, or copies may be purchased from the Commission's duplicating contractor, ITS Inc., 1231 20th St. NW., Washington DC 20036; (202) 857–3088.

Analysis of Proceeding

I. Introduction

The Commission adopted the *First Report and Order and Further Notice of Proposed Rulemaking,* 61 FR 38605 (July 25, 1996) in this docket, which implemented the provisions of section 251 of the Communications Act of 1934, as amended, that relate to telephone number portability. *In re* Telephone Number Portability, CC Docket No. 95–116, *First Report and Order and Further Notice of Proposed Rulemaking,* 11 FCC Rcd 8352 (1996) (*First Report and Order*). Specifically, section 251(b)(2) requires that all local exchange carriers (LECs) provide, ''to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.'' 47 U.S.C. 251(b)(2). Section 251(e)(2) provides that ''the costs of establishing * * * number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.'' 47 U.S.C. 251(e)(2). The Communications Act of 1934, as amended (''the Act'' or ''the 1996 Act'') defines ''number portability'' as ''the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.'' 47 U.S.C. 153(30). In the *First Report and Order,* the Commission determined, among other things, that it has authority under section 251 to promulgate rules regarding long-term and currently available (or ''interim'') number portability, as well as to establish cost recovery methods for each.

Twenty-two parties filed petitions for reconsideration or clarification of the *First Report and Order.* Nineteen parties filed oppositions to or comments on the petitions, and 16 parties filed reply comments. On March 6, 1997, the Commission adopted a *First Memorandum Opinion and Order on Reconsideration,* 62 FR 18280 (April 15, 1997) in this proceeding, addressing a number of these issues. *In re* Telephone Number Portability, CC Docket 95–116, *First Memorandum Opinion and Order on Reconsideration,* 12 FCC Rcd 7236 (1997). A *Second Memorandum Opinion and Order on Reconsideration,* 63 FR 68197 (Dec. 10, 1998) clarified that all LECs must discontinue using interim number portability in areas where a long-term number portability method has been implemented. *In re*

Telephone Number Portability, CC Docket 95–116, *Second Memorandum Opinion and Order on Reconsideration,* 13 FCC Rcd 21,204 (1998). The item also clarified that Remote Call Forwarding (RCF) and Flexible Direct Inward Dialing (DID) are not the exclusive methods of providing interim number portability that LECs are obligated to provide on a transitional basis. Instead, LECs may implement any technically feasible method of interim number portability comparable to RCF and DID. The Commission also held that a LEC is required to implement the specific method of interim number portability requested by a competing carrier, provided that provision of the requested method is not unduly burdensome. A *Third Memorandum Opinion and Order on Reconsideration.* CC Docket No. 95–116, 13 FCC Rcd 16,090 (1998) denied a petition for reconsideration that sought modification to the long-term number portability deployment schedule. In its *Third Report and Order* on number portability, 63 FR 35150 (June 29, 1998), CC Docket No. 95–116, 13 FCC Rcd 11,701 (1998), the Commission adopted rules governing recovery of the costs of long-term number portability. In this *Fourth Memorandum Opinion and Order on Reconsideration,* the Commission addresses issues raised by petitioners relating to cost recovery for interim number portability.

II. Background

3. In the *First Report and Order,* the Commission exercised its authority to prescribe requirements governing the LECs' duty to provide number portability. After determining that section 251(b)(2) requires LECs to provide number portability in the short term, the Commission prescribed that such number portability be provided through Remote Call Forwarding (RCF), Flexible Direct Inward Dialing (DID), or other comparable methods. The Commission based this finding on its conclusion that section 251(b)(2), by referring to the provision of number portability ''to the extent technically feasible,'' creates a dynamic requirement that allows for changes in the methods by which a LEC provides the required number portability. Accordingly, the Commission concluded that because RCF, DID, and other comparable measures currently are technically feasible number portability methods, section 251(b)(2) requires LECs to provide number portability through such methods. The Commission stated that, upon receipt of a specific request from another telecommunications carrier, a LEC must provide number portability through such measures as soon as reasonably possible, until such time as the LEC implements a long-term database method for number portability in that area.

4. In light of its finding that the Communications Act requires LECs to provide interim number portability, the Commission also determined that it must adopt cost recovery principles for interim number portability measures pursuant to section 251(e)(2). The Commission concluded that section 251(e)(2) ''gives us specific authority to prescribe pricing principles that ensure that the costs of establishing number portability are allocated on a 'competitively neutral' basis.'' Applying section 251(e)(2) to interim number portability, the Commission concluded that it should adopt guidelines that the states must follow in mandating cost recovery mechanisms for interim number portability measures.

5. Section 251(e)(2) requires that ''the costs of establishing number administration and number portability be borne by all telecommunications carriers on a competitively neutral basis.'' 47 U.S.C. 251(e)(2). In the *First Report and Order,* the Commission determined that the costs of currently available (referred to here as interim) number portability are those ''incremental costs incurred by a LEC to transfer numbers initially and subsequently forward calls to new service providers.'' The Commission also determined that for purposes of interim number portability, the phrase ''all telecommunications carriers'' was to be read literally, and included ''any provider of telecommunications services,'' including incumbent LECs, new LECs, commercial mobile radio service (CMRS) providers, and interexchange carriers (IXCs).

6. The Commission also set forth two criteria with which any cost recovery method must comply in order to be considered competitively neutral. First, ''a 'competitively neutral' cost recovery mechanism should not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber.'' Second, the cost recovery mechanism ''should not have a disparate effect on the ability of competing service providers to earn normal returns on their investments.'' In the *First Report and Order,* the Commission provided some examples of methods currently in use that would comply with these criteria. Such methods include, but are not limited to: allocating incremental costs based on (a) the number of ported numbers, (b) the number of active telephone numbers, (c) the number of active telephone lines, (d) gross telecommunications revenues net of charges paid to other carriers; and (e) each carrier bearing its own costs. The Commission further stated that requiring new entrants to bear all of the costs of interim number portability, measured on the basis of incremental costs, would not comply with the statutory requirements of section 251(e)(2). In setting forth these criteria, however, the Commission left to the states the determination of the specific cost recovery mechanism to be utilized. On May 5, 1998, the Commission adopted a *Third Report and Order* that resolved numerous issues regarding the means by which carriers will bear the costs of providing long-term number portability. The Commission found that section 251(e)(2) expressly and unconditionally grants the Commission authority, and requires the Commission, to ensure that all telecommunications carriers bear the costs of providing number portability for interstate and intrastate calls on a competitively neutral basis. The Commission concluded that section 251(e)(2) addresses both interstate and intrastate matters and overrides the reservation of authority of section 2(b) to the states over intrastate matters. Thus, the Commission determined that section 251(e)(2) authorizes it to provide the distribution and cost recovery mechanism for all the costs of providing long-term number portability. The Commission determined that an exclusively federal recovery mechanism for long-term number portability ''will enable the Commission to satisfy most directly its competitive neutrality mandate.''

II. Reconsideration Issues

A. Commission Authority To Require Interim Number Portability

1. Background

7. In the *First Report and Order,* the Commission required LECs to provide interim number portability, based on the 1996 Act's requirement that LECs provide number portability ''to the extent technically feasible.'' The Commission based this conclusion on the language of section 251(b)(2), which states that LECs have ''[t]he duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.'' Several carriers challenge the Commission's finding that the 1996 Act provides authority for the Commission to order LECs to provide interim number portability.

2. Discussion

8. The Commission reaffirms its earlier conclusion that it has authority to require that number portability be implemented ''to the extent technically feasible'' and that its authority under section 251(b)(2) encompasses all forms of number portability. Section 3(30) of the Act defines number portability as ''the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.'' This definition is not limited to any one technical method of number portability. Nor is the duty of LECs pursuant to section 251(b)(2), to provide number portability ''to the extent technically feasible . . . in accordance with requirements prescribed by the Commission,'' limited to long-term number portability. The Commission acknowledges that some ambiguity exists regarding the statutory mandate to require the provision of interim number portability, because, while sections 251(b) and 3(30) refer to the provision of ''number portability,'' section 271(c)(2)(B) refers to both ''regulations pursuant to section 251 to require number portability'' and ''interim number portability'' to be provided by Bell Operating Companies (BOCs) until the Commission issues such regulations.'' *See* 47 U.S.C. 251(b)(2), 271(c)(2)B)(ix), 153(30). The Commission finds, however, that its earlier interpretation of section 251(b)(2), that is, requiring all LECs to provide number portability to the extent technically feasible, is consistent with, and necessary to effectuate, Congress's goal to promote competition in the provision of local telecommunications service. Indeed, prior Commission decisions reflect its understanding of Congress's intent, stated in the *First Report and Order,* that number portability is a dynamic concept that allows for changes in the methods by which LECs provide it. Additionally, in placing number portability obligations within section 251, which is concerned overall with the development of competitive local markets, Congress recognized the importance of number portability to the development of local competition. Because the statutory language, like the language in the House bill, requires LECs to provide number portability ''to the extent technically feasible'' and according to requirements prescribed by the Commission, rather than ''when technically feasible,'' the Commission does not believe that this legislative history suggests an intent by Congress to prevent the Commission from requiring LECs to provide ''interim,'' ''currently available,'' or ''transitional'' number portability until ''true'' number portability becomes available.

9. The Commission finds unpersuasive BellSouth's contention that, because Congress considered including a specific reference to interim number portability, but did not adopt it in section 251(b), the lack of such language demonstrates that the Commission is without jurisdiction in this area, in particular regarding language set forth in section 261 of Senate Bill 652. This language was not included in the final version of the legislation. Because the legislative history provides no explanation for the deletion of this language, it is subject to various interpretations, and the Commission is not persuaded that BellSouth's is the most reasonable among them. *See Mead Corp.* v. *Tilley,* 490 U.S. 714, 723 (1989); *Rastelli* v. *Warnder,* 782 F.2d 17, 23 (2d Cir. 1986). The Joint Explanatory Statement of the Conference Report states that all differences between the Senate Bill, the House Amendment, and the substitute reached in conference are noted therein ''except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.'' Because the Joint Explanatory Statement does not address the omission of section 261 of the Senate Bill from the final legislation, the more logical inference from the quoted statement is that Congress regarded the change as an inconsequential modification rather than a significant alteration. This view is supported by two additional facts noted above: first, the statement in the Joint Explanatory Statement that section 251 ''incorporates provisions from both the Senate Bill and the House Amendment;'' and second, the statements from the House Report suggesting that the Commission's authority to prescribe requirements for number portability extends both to interim number portability, which is being provided now, and to long-term number portability, which will ''be deployed when it is technically feasible.''

10. This reading of the term ''number portability'' to include all forms of number portability, whether interim or long-term, also is more consistent than BellSouth's reading with Congress' goal of fostering competition in the local exchange marketplace. Congress recognized that number portability is essential to meaningful competition in the provision of local exchange services, and the record in this proceeding demonstrates that customers are reluctant to switch carriers if doing so requires that they give up their current telephone numbers. Nor is this view inconsistent with the distinction between ''interim number portability'' and ''section 251 number portability'' referenced in section 271(c)(2)(B)(ix). The legislative history of the 1996 Act does not explain why Congress decided to refer specifically to interim number portability only in section 271(c)(2)(B)(ix). In the absence of such an explanation, and given the broad definition of number portability in section 3(30) and the legislative history described above, it seems unlikely that Congress's reference to interim number portability in section 271(c)(2)(B)(ix) was intended to narrow the concept of number portability as used elsewhere in the statute.

11. Contrary to BellSouth's assertion, in the *First Report and Order,* the Commission did not rely on section 271(c)(2)(B)(xi) as the basis for requiring all LECs to provide interim number portability. Rather, the Commission merely referred to section 271(c)(2)(B)(xi) as offering further support for its interpretation of section 251(b)(2). In addition, the Commission explained that its interpretation of section 251(b)(2) would prevent a BOC seeking interLATA authorization, pursuant to section 271 of the Act, from being able to avoid providing number portability during the time between the adoption of the Commission's number portability rules and the implementation of long-term number portability measures. *See* 47 U.S.C. 271. Under BellSouth's interpretation, a BOC could refuse to offer interim number portability from the time of the adoption of the *First Report and Order* until the actual implementation of long-term number portability, yet still be in compliance with the number portability checklist requirement set forth in section 271. The Commission believes that a more logical interpretation of these sections is that, in providing for both types of number portability, Congress did not intend for there to be such a time lag but instead required the provision of interim number portability until long-term number portability is in place.

B. Commission Authority To Establish Cost Recovery Guidelines for Interim Number Portability

1. Background

12. In the *First Report and Order,* the Commission asserted jurisdiction over interim number portability and established cost recovery guidelines for interim number portability measures for the states to implement. Several commenters assert that the Commission lacks authority to promulgate cost recovery guidelines for interim number portability.

2. Discussion

13. The Commission upholds its earlier decision and affirms its authority to establish cost recovery guidelines for interim number portability measures. Its interpretation of the statute finds support in the language of the 1996 Act, is consistent with the Act's underlying goals, and is consistent with the conclusions reached in the *Third Report and Order.*

14. The Commission finds that sections 251(b)(2) and 251(e)(2) grant it explicit authority over, respectively, the provision of and the recovery of costs associated with number portability. 47 U.S.C. 251(b)(2), (e)(2). The Commission finds that its authority under section 251(e)(2), as with section 251(b)(2), is not limited to long-term number portability, since the statutory definition of number portability draws no distinction between interim and long-term number portability. Section 3(30) of the Act defines number portability as ''the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another. 47 U.S.C. 153(30). This definition is not limited to one technical method of providing number portability. Similarly, sections 251(b)(2) and 251(e)(2) refer only to the provision and cost recovery of ''number portability,'' but do not limit the term ''number portability'' to long-term measures. As discussed above, given the broad definition of number portability in section 3(30), it seems unlikely that Congress's reference to interim number portability in section 271(c)(2)(B)(ix) was intended to narrow the concept of number portability as used elsewhere in the statute, such as in sections 251(b)(2) and 251(e)(2). In addition, the Commission finds that its interpretation of section 251(b)(2), requiring all LECs to provide interim number portability, is consistent with, and necessary to effectuate Congress's goal to promote competition in the provision of local telecommunications service.

15. The Commission also notes that its conclusion that it has statutory authority over interim number portability, regardless of whether it is characterized as an intrastate or interstate service, and the establishment of cost recovery rules for interim number portability, is consistent with its holdings in the *Third Report and Order.* There, the Commission concluded that the express and unconditional grant of authority of section 251(e)(2) to the Commission grants us the authority to ensure that carriers bear the costs of providing number portability on a competitively neutral basis for both interstate and intrastate calls. Section 251(e)(2) states that carriers shall bear the costs of number portability ''as determined by the Commission,'' and does not distinguish between costs incurred in connection with intrastate calls and costs incurred in connection with interstate calls. Thus, the Commission concludes for interim number portability, as it did in the *Third Report and Order* for long-term number portability, that section 251(e)(2) addresses both interstate and intrastate matters and overrides the reservation of authority to the states over intrastate matters contained in section 2(b). 47 U.S.C. 152(b). *See Iowa Utils. Bd.* v. *FCC,* 120 F.3d at 792, 794 and n.10, 795 and n.12, 802 and n.23, 806. *See also In re* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96–98, *First Report and Order,* 61 FR 45476 (August 29, 1996), 11 FCC Rcd 15,499 at 15,548 and n.155 (1996), *vacated in part, aff'd in part, Iowa Utils. Bd.* v. *FCC,* 120 F.3d 753 (8th Cir. 1997), *rev'd in part, aff'd in part and remanded sub nom. AT&T Corp.* v. *Iowa Utils. Bd.,* 119 S.Ct. at 730.

16. The Commission is not persuaded that it lacks jurisdiction over cost recovery for interim number portability measures because the states have historically regulated the retail provision of RCF and DID. The states' regulation of rates for these services when provided on a retail basis does not preclude an express Congressional grant of authority to this Commission under section 251(e)(2) to regulate the cost recovery for interim number portability. Section 251(e)(2) states that carriers shall bear the costs of number portability ''as determined by the Commission,'' and does not distinguish between costs incurred in connection with intrastate calls and costs incurred in connection with interstate calls.

17. The Commission disagrees with Bell Atlantic's claim that, because section 251(e)(2) refers to the costs of ''establishing'' number portability and there is nothing to ''establish'' with respect to interim number portability, the Commission is without authority to adopt cost recovery guidelines for the provision of interim number portability. In arguing that there is nothing to ''establish'' regarding interim number portability, Bell Atlantic defines the term ''establish'' narrowly, *i.e,* limiting the meaning of ''establish'' to physically upgrading the public switched telephone network or creating databases necessary for customers to retain their telephone numbers when switching carriers. To give full effect to the pro-competitive objectives of the 1996 Act, the Commission concludes that the term ''establish'' should be read more broadly. Although the functionalities necessary to provide interim number portability already exist in most public switched telephone networks, additional actions are necessary to implement interim number portability in a manner useful to new entrants. The actions required to establish interim number portability and the associated costs vary according to where the call originates in a carrier's network. The provision of interim number portability results in switching and transport costs, and may include some small non-recurring costs, such as administrative costs. Because additional actions are required by LECs in the provision of interim number portability, the Commission finds that the process of transferring numbers and subsequently forwarding calls is what ''establishes'' (*i.e.,* ''creates'' or ''brings into existence'') interim number portability for use by new entrants.

18. In addition to disagreeing with Bell Atlantic's narrow interpretation of the term ''establish'' in section 251(e)(2), the Commission also finds that it would be contrary to Congressional intent to conclude that the Commission's authority to impose a competitively neutral cost recovery mechanism is limited to long-term number portability. Congress imposed a number portability requirement on all LECs, and directed the Commission to adopt a competitively neutral cost recovery mechanism, in order to give new entrants a realistic opportunity to compete against incumbent LECs for local exchange customers. 47 U.S.C. 251(e). Mandating a number portability requirement without ensuring a competitively neutral cost recovery mechanism could significantly handicap the ability of new entrants to

win customers, whether the method of porting numbers is long-term or interim. In the *First Report and Order,* the Commission concluded that, because interim number portability costs will be small and incurred for a relatively short period, requiring carriers to bear their own costs would meet its competitive neutrality guidelines. The Commission specifically prohibited incumbent LECs from shifting all of their costs onto new entrants, however. Because both carriers would be competing for the same customer, the new provider may be forced to charge higher prices due to its need to recover the incumbent LEC's incremental costs of number portability, while the customer would face no additional charges if it stayed with the incumbent LEC. Thus, the Commission concludes that Bell Atlantic's interpretation—that the Commission has authority under section 251(e)(2) to impose a competitively neutral cost recovery mechanism for long-term number portability, but lacks such authority over interim number portability—will not promote competition.

19. The Commission similarly is not persuaded by Bell Atlantic's claim that cost recovery for interim number portability must be subject to negotiation between carriers, and that the Commission therefore lacks authority to establish cost recovery guidelines. Bell Atlantic's argument is based on language in the Senate Report discussing section 261 of Senate Bill 652, which states that interconnection agreements reached under section 251 must, if requested, provide for interim number portability, including the method by which it will be provided, and the amount of compensation. As discussed above, section 261, as it appeared in Senate Bill 652, distinguished between interim and final number portability, but was ultimately dropped from the final version of the 1996 Act. The Commission finds unpersuasive Bell Atlantic's interpretation of the legislative history. *See Helvering* v. *Hallock,* 309 U.S. 106, 119–20 (1940); *Brennan* v. *Midwestern United Life Insurance,* 259 F. Supp. 673 (1966); *Women Involved in Farm Economics* v. *USDA,* 682 F. Supp. 599 (1988).

20. The Commission rejects BellSouth's assertion that the Commission lacks authority to depart from cost-causative pricing principles. As the Commission explained in the *Third Report and Order,* Congress imposed a number portability requirement on all LECs, and directed the Commission to adopt a competitively neutral cost recovery mechanism, in order to give new entrants a realistic opportunity to compete against incumbent LECs for local exchange customers. A cost causative basis for pricing number portability could defeat the purpose for which number portability was mandated. Mandating a number portability requirement without ensuring a competitively neutral cost recovery mechanism could significantly handicap the ability of new entrants to win customers, whether the method of porting numbers is long-term or interim, because they could be forced to bear all incremental costs of number portability and pass those costs onto customers in the form of higher prices.

21. Finally, the Commission rejects BellSouth's contention that the Commission based its jurisdiction to order interim number portability on pre-1996 Act provisions and is therefore precluded from relying on section 251(e)(2) for jurisdiction to determine cost recovery for such interim measures. To the contrary, in the *First Report and Order* the Commission concluded only that sections 1 and 202 of the Communications Act provide a pre-existing and independent basis for its jurisdiction to require the provision of interim number portability methods. The Commission did not rely solely on sections 1 and 202 as a basis for jurisdiction, and hereby clarifies that, although it finds that sections 1 and 202 provide an additional statutory basis on which it may require interim number portability, it has independent authority to do so by virtue of sections 251(b)(2) and 251(e)(2) of the Act.

22. The Commission reiterates its earlier finding, as discussed above, that section 251(e)(2) addresses both interstate and intrastate matters, and overrides section 2(b)'s reservation of authority to the states over intrastate matters. Although the Commission asserts federal jurisdiction over interim number portability and affirms its authority to establish cost recovery guidelines for interim number portability measures, it denies requests that it generally preempt state number portability cost recovery policies. Instead, the Commission affirms its earlier conclusion that states may continue to utilize various cost recovery mechanisms as long as they meet the Commission's competitive neutrality guidelines. This cost recovery approach is different than the one adopted in the *Third Report and Order* for long-term number portability cost recovery, in which the Commission adopted an exclusively federal cost recovery mechanism. The Commission notes that in the *Third Report and Order,* it found that section 251(e)(2) authorizes the Commission to provide the distribution and recovery mechanism for all the costs of providing long-term number portability, but did not interpret the statute to require the adoption of an exclusively federal recovery mechanism for all forms of number portability. Instead, an exclusively federal cost recovery mechanism for long-term number portability was adopted for several policy reasons that are inapplicable to interim number portability. The Commission determined in the *Third Report and Order* that an exclusively federal cost recovery mechanism for long-term number portability will enable it ''to satisfy most directly its competitive neutrality mandate and will minimize the administrative and enforcement difficulties that might arise where jurisdiction over long-term number portability divided.'' Additionally, an exclusively federal cost recovery mechanism for long-term number portability obviates the need for state allocation of the shared costs of the regional database, a task that would likely be complicated by the database's multistate nature.

23. Although the Commission has determined that the Commission's authority to provide the distribution and recovery mechanism for all number portability costs extends to long-term and interim number portability, it does not find it necessary to establish an exclusively federal recovery mechanism for interim number portability. Instead, it will continue to permit states to provide for cost recovery in accord with the competitive neutrality standards adopted in the *First Report and Order,* and elaborated here, for the following reasons. First, the Commission believes that adopting an exclusively federal cost recovery mechanism would be very disruptive to existing interim number portability cost recovery. States have been providing for interim number portability cost recovery since 1996. Also, cost recovery for interim number portability has been determined through existing interconnection agreements, as incumbent LECs are required by section 251(c) to provide for interim number portability in their interconnection agreements. 47 U.S.C. 251(c). The Commission notes that federal courts have upheld the interim number portability cost recovery guidelines established in *the First Report and Order. See, e.g., Southwestern Bell Telephone* v. *AT&T, 1998 WL 657717*4* (D.Tex. 1998); *see also US WEST Communications* v. *MFS Intelnet,* 35 F. Supp. 2d 1221, 1236 (D.Or. 1998).

Second, the Commission believes that disruption of existing cost recovery mechanisms is not warranted because interim number portability will remain in place for a very limited period of time. Interim number portability was replaced by long-term number portability in the 100 largest MSAs by the end of 1998, and is subsequently being replaced in other switches in which a bona fide request for number portability has been received. Third, the Commission believes that a cost allocation method that requires LECs to bear their own costs of interim number portability is competitively neutral, as individual carrier's costs will be small and no shared costs or database costs must be allocated. As previously indicated, to the extent that RCF, DID and other comparable methods are used to provide currently available number portability, and the capability for currently available number portability already exists in the incumbent LEC network, only the short-run incremental costs are properly attributed to interim number portability. Having already provisioned their switches with enough capacity to carry all of their respective customers' incoming and outgoing calls, the Commission does not expect incumbent LECs to incur additional costs with respect to switch capacity when a customer chooses to port its number to a new service provider and the incumbent LEC must forward calls using interim number portability methods. As a result, the Commission expects little or no change in the level of incumbent LECs switching and transport costs per ported number.

24. As stated in the *First Report and Order,* if a carrier believes that a LEC's pricing provisions for number portability violate the Commission's competitive neutrality guidelines or violate a state-mandated cost recovery mechanism, it may be able to seek relief from its state commission. If the carrier is not able to obtain relief in this way, or if a state has not yet adopted a cost recovery mechanism for cost recovery of interim number portability measures, it may be able to bring action against the LEC in federal district court pursuant to section 207 for damages or file a section 208 complaint with this Commission against another carrier alleging a violation of the Act or the Commission's rules. Alternatively, if a carrier believes that a state has not properly applied the statute or Commission rules, or if a state's cost recovery mechanism is not competitively neutral because it improperly burdens new entrants with interim number portability costs, it may file a request for declaratory ruling with the Commission or otherwise seek court review of the state cost recovery mechanism.

C. Cost Recovery Guidelines

1. Background

25. In the *First Report and Order,* the Commission established two criteria with which any cost recovery method must comply in order to be considered competitively neutral. First, ''a 'competitively neutral' cost recovery mechanism should not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber.'' Second, the cost recovery mechanism ''should not have a disparate effect on the ability of competing service providers to earn normal returns on their investments.'' In setting forth these criteria, however, the Commission left to the states the determination of the exact cost recovery mechanism to be utilized. Several carriers have challenged the Commission's cost recovery guidelines.

2. Discussion

26. The Commission rejects the claims of those carriers that assert that its cost recovery guidelines are arbitrary, capricious, or plain error. Number portability promotes competition by allowing customers to switch carriers easily without having to change their telephone numbers. In the *First Report and Order,* the Commission explained that the Commission departed from cost causation principles with respect to interim number portability because, ''[d]epending on the technology used, to price number portability on a cost causative basis could defeat the purpose for which it was mandated.'' As the Commission stated in the *Third Report and Order,* pricing number portability on a cost-causative basis could defeat Congress's purpose of removing barriers to local competition because the nature of the costs involved with some number portability solutions might make it economically infeasible for some carriers to compete for a customer serviced by another carrier. If it is assumed that the customer who ports his or her number is the cost causer, and all of the costs associated with forwarding a call are placed on the customer who switches carriers, customers who want to retain their telephone numbers could be deterred from switching carriers due to increased costs. This result is wholly contrary to the pro-competitive intent of sections 251(b)(2) and 252(e)(2) regarding the provision of number portability.

27. Additional economic and policy considerations also support the Commission's decision not to follow strict principles of cost causation in this specific context by imposing all interim number portability costs on new entrants. First, all customers benefit from number portability because number portability promotes competition, lower prices, increased choices, and greater innovation. In addition, other customers will benefit to the extent that they need not search for a customer's new number when that customer switches carriers. Since number portability generates an externality from which all customers benefit, the porting customers should not pay the full economic costs. Moreover, as discussed in the *First Report and Order* and *Third Report and Order,* if the costs are placed entirely on one carrier or group of carriers, ''the new entrant's share of the cost [could be] so large, relative to its expected profits, that the entrant would decide not to enter.'' Preventing new, efficient entrants from offering service because of costs associated with number portability would directly contravene one of the 1996 Act's primary purposes, namely to encourage local exchange competition.

28. Furthermore, the Commission agrees with MCI that the costs of number portability should not be viewed narrowly as simply costs of entry, but more broadly as costs of creating a competitive environment that will benefit all consumers. In the *Third Report and Order,* the Commission concluded that applying principles of competitive neutrality to long-term number portability cost recovery would ensure that the cost of number portability does not undermine the goal of the 1996 Act to ''promote a competitive environment'' for the provision of local communications services. Similarly, the Commission concludes that requiring incumbent LECs to share in the costs of providing both interim and long-term number portability is in the public interest and will contribute to the development of competition in the local exchange market.

29. BellSouth asserts that the cost recovery guidelines for interim number portability are ''vague and ambiguous,'' and that the Commission failed to define the phrases ''appreciable cost advantage'' and ''normal return.'' As applied to its cost recovery guidelines, the Commission clarifies that, when the Commission used the phrase ''appreciable cost advantage'' the Commission meant a difference in costs that, if reflected in retail prices, would cause a not-insignificant number of

customers to change, or decline to change, carriers. The Commission also finds that a ''normal return'' in economic terms is the return sufficient to assure confidence in the financial integrity of the company so as to maintain its credit and attract capital. Normal return in this context does not guarantee that all firms will be profitable and, hence, remain in the industry. Rather, this concept means that number portability costs imposed on a particular carrier should not be so significant, by themselves, as to drive existing carriers out of the market or make continued operations unprofitable, or deter the entry of carriers that, but for the number portability costs, would have entered the market.

30. The Commission finds no merit to BellSouth's suggestion that the Commission's definition of, and criteria for, competitive neutrality, are novel or unprecedented. The ''competitively neutral'' principles established in the *First Report and Order* were drawn from well-accepted principles of economic theory. To be competitive, a firm must be able to offer a particular customer a service/price package which that customer finds comparable to that offered by other carriers, and it must be able to do so while earning a normal rate of return. In making business decisions, firms are concerned with both the short-run and the long-run. In the short-run, firms are concerned with their ability to compete, while in the long-run firms are concerned with remaining in the market. The first criterion of the competitive neutrality test addresses the short-run concern, in that carriers cannot compete effectively if one carrier has an appreciable, incremental cost advantage over other carriers. The second criterion addresses the concern that the cost recovery mechanism should not have a disparate effect on the ability of competing service providers to earn normal returns on their investments.

31. The Commission also rejects arguments that the methods currently suggested in the *First Report and Order* fail to meet the second criterion of competitive neutrality, which states that ''[the allocation mechanism] should not have a disparate effect on the ability of competing service providers to earn normal returns on their investments.'' As applied to interim number portability, the methods for allocating the costs of interim number portability suggested in the *First Report and Order,* including allocation according to a carrier's number of active lines or number of active telephone numbers, meet the criteria established for competitive neutrality. Given the relatively small incremental costs of interim number portability, the Commission concludes that using either number of telephone lines or number of active telephone numbers as the basis for allocation also meets the second criterion. Although that carrier's costs for number portability go up relative to other carriers, it also receives the corresponding revenues generated by the new customer. One characteristic of these rules is that the costs allocated to particular carriers increase with the size of the carrier so that smaller carriers will not be driven from the market. In creating the competitive neutrality criteria, the Commission also was guided by the 1996 Act's objectives. Number portability and competitively neutral cost recovery are necessary to fulfill the 1996 Act.

32. The Commission also rejects BellSouth's argument that it is arbitrary and capricious to use transitional measures as an incentive to adopt long-term number portability as quickly as possible. As discussed above, the Commission finds that it has jurisdiction over number portability, and that number portability is a dynamic, not static, concept. Section 271 of the Act explicitly states that BOCs must provide ''interim telecommunications number portability'' until ''the date by which the Commission issues regulations pursuant to section 251 to require number portability.'' While the costs of long-term number portability will be greater than those of interim number portability, carriers will be able to recover their costs through two separate federally-tariffed charges, and end-user and query service charge.

33. The Commission disagrees that it is interfering with existing state-mandated interim number portability cost recovery mechanisms. As the Commission stated in the *First Report and Order,* the Commission provides flexibility for the states to determine their own cost allocation mechanisms, subject to the guidelines set forth in the *First Report and Order.* If a state previously determined its cost allocation scheme without taking section 251(e)(2) into account, that state must now ensure that its method comports with the 1996 Act and the Commission's implementing regulations.

34. The Commission disagrees with AirTouch's assertion that carriers that do not serve customers with ported numbers, such as wireless carriers, should not be required to share in the cost of number portability because such carriers do not benefit from number portability. The Commission looks to section 251(e)(2) of the Act, which plainly requires that the costs of establishing number portability be borne by ''all telecommunications carriers on a competitively neutral basis as determined by the Commission.'' 47 U.S.C. 251(e)(2). This interpretation is consistent with the *Third Report and Order,* wherein the Commission concluded that the provisions of section 3 of the Act, when read together, define ''all telecommunications carriers'' as all persons or entities other than aggregators that charge to transmit information for the public without changing the form or content of the information, regardless of the facilities they use. Applying the statutory definition to section 251(e)(2), the Commission concluded that the way all telecommunications carriers bear the costs of providing number portability—including incumbent LECs, competitive LECs, CMRS providers, IXCs, and resellers—must be competitively neutral as determined by the Commission. The Commission has exercised its statutory mandate by articulating criteria for states to use in adopting cost recovery mechanisms. As the states develop cost recovery mechanisms pursuant to the statutory mandate, carriers will bear their own costs or states may allocate costs in a competitively neutral fashion on all telecommunications carriers that does not unduly burden any particular carrier or group of carriers.

35. The Commission finds no merit in SCLP and SCI's claim that requiring CMRS providers to contribute to number portability would have a ''disparate effect'' on their ability to earn a normal rate of return. These carriers have failed to present any evidence to support their claim that contributing to the costs of interim number portability would have such an effect. As noted in the *First Report and Order,* a disparate effect may be said to exist when a ''new entrant's share of the [interim number portability] costs may be so large, relative to its expected profits, that the entrant would decide not to enter the market.'' With respect to existing carriers, the Commission clarifies that a disparate effect under its definition would exist if that carrier or class of carriers would be driven from the market, while other carriers would not, as a result of number portability costs. These carriers' unsupported allegations that contributing to the costs of interim number portability would have a disparate effect are insufficient to support their request for a blanket exemption for all CMRS carriers.

36. The Commission also disagrees with SCLP and SCI's assertion that its

First Report and Order demonstrates an intent that the costs of interim number portability be placed on non-cost causers only where necessary to preserve competitive neutrality. In making this claim, SCLP and SCI rely on the word ''relevant'' in the Commission's statement that ''states may apportion the incremental costs of interim measures among relevant carriers by using competitively neutral allocators.'' In using the term ''relevant carriers,'' the Commission intended to reflect that differing cost recovery mechanisms, all of which could satisfy its competitively neutral mandate, might encompass all, or a subset of all, telecommunications carriers, depending on the specifics of the cost recovery mechanism.

37. In the *First Report and Order,* the Commission concluded that, in choosing the phrase ''all telecommunications carriers,'' Congress intended to include all types of carriers in the cost recovery mechanism because, unlike the requirement to provide number portability which applies solely to local exchange carriers, the requirements relating to number portability cost recovery apply to ''all telecommunications carriers on a competitively neutral basis.'' The term ''telecommunications carrier'' is defined in the Act as ''any provider of telecommunications services. * * *'' 47 U.S.C. 153(44). The Commission adopted a literal reading of the statutory requirement and of the statutory definition of ''telecommunications carriers.'' While the Commission's interpretation prevents an incumbent LEC from recovering its costs entirely from the new entrant, such an incumbent LEC may be able to recover its incremental interim number portability costs via the state-adopted allocation mechanism from ''all telecommunications carriers'' if a state implements such a cost recovery mechanism. Since the carrier providing the call forwarding itself falls within the category of ''all telecommunications carriers,'' the carrier providing the forwarding is prevented by statute from recovering all of its costs from other carriers. States could also permit incumbent LECs to recover any remaining costs in some other manner, *e.g.,* from end-users.

38. The Commission affirms its finding that a ''mechanism that requires each carrier to pay for its own costs of interim number portability measures'' is competitively neutral and would constitute an acceptable cost recovery scheme that states could adopt. First, no significant capital costs are incurred by the carrier winning the customer or by the carrier losing the customer. Thus, the cost recovery mechanism does not give one service provider an appreciable, incremental advantage over another service provider when competing for the same customer. Second incumbent LECs should still be able to earn a normal return, as the anticipated costs of interim number portability measures are relatively small.

39. The Commission disagrees with BellSouth's argument that ''having determined that the costs of [interim number portability] will be incurred solely by the incumbent LECs,'' it was arbitrary and capricious for the Commission to determine that requiring each carrier to bear its own costs does not operate to the competitive disadvantage of the incumbent LECs. The Commission also disagrees with Bell Atlantic's argument that the *First Report and Order* was not competitively neutral because the Commission denied Bell Atlantic the ability to recover incremental costs of interim number portability. As a threshold matter, these carriers are incorrect when they assert that the Commission determined that the costs of providing interim number portability will be incurred solely by incumbent LECs. Although finding that ''initially, the costs of providing interim number portability will be incurred primarily by the incumbent LEC, because the incumbent LECs currently hold the vast majority of numbers in use,'' the *First Report and Order* imposed interim number portability requirements on all local exchange carriers. The Commission finds that it would be competitively neutral for carriers to pay their own incremental interim number portability costs, that is, to absorb the costs themselves or pass the costs onto their own retail customers. Additionally, the Commission has not foreclosed incumbent LECs from recovering all of their incremental costs of interim number portability, but has permitted each state to adopt a cost recovery mechanism, consistent with its competitive neutrality guidelines. The *First Report and Order* does not deny any carrier the right to recover costs, but, rather adopts guidelines that states must follow in implementing a cost recovery mechanism.

40. The Commission also concludes that the assertion by Bell Atlantic and Cincinnati Bell that new entrants should be required to bear all the costs of interim number portability is not consistent with the pro-competitive intent of sections 251(b)(2), 252(e)(2), and the 1996 Act as a whole. As the Commission stated in the *Third Report and Order,* the Commission has interpreted the Congressional mandate of competitive neutrality to require the Commission to depart from cost-causation principles when necessary to ensure that the cost of number portability borne by each carrier does not significantly affect any carrier's ability to compete with other carriers. The Commission specifically prohibited incumbent LECs from shifting all of their costs onto new entrants, however. Despite the fact that such incremental costs are small, shifting all of an incumbent LEC's costs of interim number portability to a new entrant could result in a cost so large, ''relative to expected profits,'' that the new entrant would decide not to enter the market. As the Commission stated in the *First Report and Order,* imposing the full incremental cost of interim number portability solely on new entrants would place them at an ''appreciable, incremental cost disadvantage relative to another service provider when competing for the same customer'' and would, therefore, violate the first criteria of the competitive neutrality mandate.

41. The Commission is not persuaded by BellSouth's contention that the cost allocation mechanisms discussed in the *First Report and Order* guarantee the profitability of the new entrants. Number portability facilitates the development of competition among local providers. Through its competitive neutrality criteria and state-determined cost allocation mechanisms, the *First Report and Order* removes a potential barrier to entry that could result from high rates or charges that incumbent LECs potentially could impose for interim number portability on new entrants that possess their own switches. It does not guarantee that a new entrant will be profitable or be able to compete successfully in the market.

42. GTE suggests a third criterion, that ''a cost recovery mechanism must not influence a customer's selection of his or her service provider.'' While the Commission agrees with GTE that a cost recovery mechanism should not influence a customer's selection of his or her service provider, this criterion is effectively embodied in the first prong of its competitive neutrality test and, thus, the Commission sees no need to revise that test.

D. Alternative Allocators for Cost Recovery of Interim Number Portability

1. Background

43. In the *First Report and Order,* the Commission provided a list of examples of allocators for interim number portability cost recovery that would

meet the Commission's criteria for competitive neutrality. The Commission stated, for example, that a cost allocator based on a carrier's number of active telephone numbers, or a carrier's relative number of presubscribed customers, would meet its competitive neutrality guidelines. Several parties ask the Commission to approve additional allocators, or take exception to cost allocators deemed to be competitively neutral by the Commission in the *First Report and Order.*

2. Discussion

44. In the *First Report and Order*, the Commission provided a non-exhaustive list of examples of allocators for interim number portability cost recovery that would meet the Commission's criteria for competitive neutrality. The Commission disagrees with GTE's argument that a federally-mandated cost pooling mechanism needs to be implemented. For the reasons discussed in the *First Report and Order*, the Commission believes that states should be able to adopt various cost recovery mechanisms based on its competitive neutrality guidelines. The Commission is not, however, precluding states from selecting cost pooling as a cost recovery mechanism, nor is the Commission determining that cost pooling is not competitively neutral for the recovery of interim number portability costs. Although in the *Third Report and Order* the Commission rejected pooling of carriers' long-term number portability costs as a mechanism for recovery of these costs because pooling mechanisms, in general, reduce carrier incentives to provide service efficiently, states may find that these disadvantages are not as significant when pooling is used as a mechanism for the recovery of interim number portability costs. Because the costs of interim number portability are relatively small, given that incumbent LECs have already provisioned their switches with the capacity to provide the services needed for interim number portability, creating incentives for carriers to provide service efficiently may be less of a concern. The Commission allows states to utilize various cost recovery mechanisms, and states will make the decision as to whether they will choose pooling as a recovery mechanism and impose cost accounting and distribution mechanisms on carriers.

45. In clarifying that the list of potential allocators referenced in the *First Report and Order* is not exhaustive, the Commission also affirms that a cost recovery mechanism based on a carriers' gross revenues is an acceptable means of allocating costs among carriers. Financial measures, including gross revenues, are developed for different uses, such as for tax filings, annual reports, and SEC filings, and are readily available for this use. Additionally, such an allocator does not disparately affect the incremental costs of winning a specific customer or group of customers. A LEC with a small share of the market's revenues would pay a percentage of the incremental costs of interim number portability that is small enough that it will have no appreciable affect on its ability to compete for that customer. Accordingly, utilizing a gross revenues allocator does not violate the Commission's competitive neutrality guidelines.

46. It appears that carriers' concerns with some of the allocators approved by the Commission are focused on its second criterion, on whether losing a customer affects a firm's ''normal return.'' Losing a customer will necessarily affect a firm's revenues and subsequent return on investment. The *First Report and Order* did not intend to change that. Rather, as stated in the *Third Report and Order*, the second prong of the competitive neutrality test does not guarantee any particular rate of return, but merely states that an allocator should not disparately affect a carrier's ability to earn a normal return. The Commission also stated that allocating costs on an active telephone number basis would meet the second criteria, because it should not give any carrier a cost advantage, relative to its competitors.

47. In a written *ex parte* presentation to the Commission, AT&T summarized a number of existing state cost recovery mechanisms in effect at that time. In one method, cost elements required for interim number portability are attributed to the requesting carrier, which is deemed the cost causer, and must be borne by that entity. This method allocates all incremental costs of interim number portability to the new entrant. The Commission reiterates its earlier conclusion in the *First Report and Order* that a cost recovery mechanism that imposes the entire incremental costs of interim number portability on a facilities-based new entrant violates its competitive neutrality criteria. New entrants subjected to such a cost recovery mechanism may pursue one of the enforcement options discussed above.

48. NYNEX suggests that allocating costs on the basis of total telecommunications retail revenues is competitively neutral and should be permitted as an allocator. The Commission agrees with NYNEX that such an allocation may meet its competitive neutrality guidelines because, as with allocators based on gross telecommunications revenues, it would not give one service provider an appreciable, incremental cost advantage over another service provider. Under this allocation method, a LEC with a small share of the market's revenues would pay a percentage of the incremental cost of number portability that will be small enough to have no appreciable affect on its ability to compete for a customer.

49. In sum, the Commission reaffirms its determination to allow each state to determine the appropriate cost recovery mechanism for its jurisdiction as long as it meets its competitive neutrality criteria. The Commission recognizes that, in the *First Report and Order*, the Commission tentatively concluded that a cost recovery mechanism for interim number portability that assesses charges based on a carrier's gross revenues less charges carriers paid to other carriers would meet its competitive neutrality guidelines, while in the *Third Report and Order*, the Commission declined to utilize this allocator for long-term number portability cost recovery. The Commission notes, however, that interim number portability and long-term number portability, as implemented pursuant to industry-wide discussions, have very different cost characteristics. A cost recovery method that is appropriate for one may not be suitable for the other. Although the Commission has established one particular cost recovery mechanism for long-term number portability, the Commission declines to issue an exclusive list of acceptable cost recovery methods for interim number portability from which the states may choose to adopt. States are free to adopt an appropriate cost recovery method pursuant to the competitive neutrality criteria.

E. Takings

1. Background

50. Several petitioners claim that its cost recovery guidelines for interim number portability do not ensure adequate compensation and therefore constitute an unlawful taking under the Fifth and Fourteenth Amendments to the Constitution.

2. Discussion

51. The Commission rejects the claim that the cost recovery guidelines for interim number portability established in the *First Report and Order* violate the Fifth Amendment's mandate that no private property shall be ''taken for public use without just compensation.''

See U.S. Const. amend. V. As discussed below, the Commission concludes that the petitioners' takings claim is premature. More importantly, in examining its cost recovery guidelines in light of criteria articulated by the Supreme Court, the Commission finds that the petitioners' takings claim fails on the merits.

52. In the *First Report and Order*, the Commission clearly stated that, although its guidelines govern state allocation of costs of interim number portability, it is the responsibility of the states to adopt specific cost recovery mechanisms. Although petitioners have broadly stated that they believe that incumbent LECs will not receive adequate compensation as a result of the guidelines established in the *First Report and Order*, they have not shown the actual impact of the guidelines based on state orders. The Commission concludes, therefore, that, absent an actual rate order under which the impact of the cost recovery guidelines can be evaluated, the petitioners' takings argument is premature. This conclusion is consistent with *FPC* v. *Texaco Inc.*, in which the Supreme Court held that ''[a]ny broadside assertion that indirect regulation will be confiscatory is premature. The consequences of indirect regulation can only be viewed in the entirety of the rate of return allowed on investment, and this effect will be unknown until the Commission has applied its scheme in individual cases over a period of time.'' *FPC* v. *Texaco Inc.* 417 U.S. 380, 391–92 (1974).

53. Assuming arguendo that the petitioners' takings claim is not premature, the Commission finds it without merit. The Supreme Court has made clear that ''government may execute laws or programs that adversely affect recognized economic values,'' *Penn Central* v. *City of New York*, 438 U.S. 104, 124 (1978), and that ''given the propriety of governmental power to regulate, it cannot be said that the Takings Clause is violated whenever legislation requires one person to use his or her assets for the benefit of another.'' *Connolly* v. *Pension Benefit Guaranty Corp.*, 475 U.S. 211, 222 (1986). In fact, ''government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law.'' *Pennsylvania Coal Co.* v. *Mahon*, 260 U.S. 393, 413 (1922). Despite the conclusory assertion of Cincinnati Bell to the contrary, its guidelines will not result in a significant economic impact on incumbent LECs. As noted in the *First Report and Order*, ''the capability to provide number portability through interim methods, such as RCF and DID, already exists in most of today's networks, and no additional network upgrades are necessary.'' The incremental costs associated with the utilization of pre-existing network functionality for purposes of interim number portability are relatively small.

54. In *Duquesne Light Co.* v. *Barasch*, the Supreme Court rejected a takings claim on the grounds that it was permissible to preclude certain costs from inclusion in an electric utility's rate base because the overall rate was within constitutional requirements. *Duquesne Light Co.* v. *Barasch*, 488 U.S. 299 (1989). A rate is too low for constitutional purposes, according to the Court, if it is ''so unjust as to destroy the value of [the] property for all the purposes for which it was acquired.'' The Court held that '' '[i]t is not the theory, but the impact of the rate order which counts.' . . . The Constitution protects the utility from the net effect of the rate order on its property. Inconsistencies in one aspect of the methodology have no constitutional effect on the utility's property if they are compensated by countervailing factors in some other aspect.''

55. In determining that the overall impact of the rate order was not constitutionally objectionable and that the takings clause was not violated, the Court in *Duquesne Light Company* took note of the fact that ''[n]o argument has been made that these slightly reduced rates jeopardize the financial integrity of the companies, either by leaving them insufficient operating capital or by impeding their ability to raise future capital. Nor has it been demonstrated that these rates are inadequate to compensate current equity holders for the risk associated with their investments. . . .'' Similarly, no showing has been made that the cost recovery guidelines at issue here will ''jeopardize the financial integrity'' of incumbent LECs, nor has a showing been made that the cost recovery guidelines will result in state rate orders that are inadequate to compensate LECs ''for the risk associated with their investments.''

56. Having already provisioned their switches with enough capacity to carry all of their customers' incoming and outgoing calls, incumbent LECs should incur no additional costs with respect to switch capacity when losing customers and using RCF to provide number portability. Although RCF will require additional switch capacity—and an increase in transport costs—to process incoming calls, this effect is offset by the fact that the incumbent LEC will no longer handle the outgoing calls originated by the ported customer. As a result, little or no change in the level of incumbent LEC switching and transport costs per ported number should occur. The Commission concludes, therefore, that the additional incremental costs of interim number portability to incumbent LECs will be extremely small. Additionally, incumbent LECs may be able to recover some portion of their costs from other carriers through state-mandated cost recovery mechanisms. Additionally, as discussed above, if a carrier believes that a LEC's pricing provisions for number portability violate the Commission's competitive neutrality guidelines or violate a state-mandated cost recovery mechanism, a carrier has a variety of ways it may seek relief.

57. Moreover, as the Supreme Court has stated, ''[t]hose who do business in the regulated field cannot object if the legislative scheme is buttressed by subsequent amendments to achieve the legislative end.'' Based on the extensive public debate that preceded enactment of the 1996 Act, it cannot be said that investors lacked adequate notice of possible changes to the Communications Act, including the number portability requirement at issue here. Indeed, while courts have readily found that a taking has occurred when interference with property rights can be characterized as a physical invasion or permanent appropriation, such a finding has not been reached when the challenged interference arises from a public program adjusting the benefits and burdens of economic life to promote the common good. The Commission's number portability cost recovery guidelines, which are designed to facilitate local telephone competition and thereby benefit all consumers of telecommunications services, falls squarely into the latter category. In short, the petitioners have failed to demonstrate that the Commission's cost recovery guidelines violate the Fifth and Fourteenth Amendments.

F. Retroactive Application of Cost Recovery Guidelines for Interim Number Portability

1. Background

58. ACSI asks the Commission to allow new entrants to recover retroactively number portability costs paid to incumbent LECs in excess of that required pursuant to the guidelines set forth in the *First Report and Order*. Specifically, ACSI requests that the Commission provide for a true-up of rates paid in excess of those required pursuant to the *First Report and Order*

as far back as February 8, 1996, the date the 1996 Act became effective, or the date number portability was first provided to the new entrant, whichever is later.

2. Discussion

59. The Commission denies ACSI's request that its cost recovery rules for interim number portability be applied to number portability provided prior to the adoption and effective date of those rules. In section 251(e)(2) of the Act, Congress required that ''the cost of establishing. . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.'' The plain language of this section demonstrates that, while establishing the parameters on how number portability costs are to be allocated and who should pay such costs, Congress intended that specific cost recovery rules were to be established by the Commission at some point in time following the enactment of the 1996 Act. The Commission rejects ACSI's argument that, because the number portability provision became effective on February 8, 1996, ACSI is merely seeking to have the Commission give effect to this pre-existing requirement. Section 251(e)(2) is not self-executing, but is dependent on Commission action. The Commission sees no basis in the record for applying the rules adopted pursuant to section 251(e) retroactively.

60. The Commission's cost recovery guidelines for interim number portability became effective August 26, 1996, however, and the Commission agrees that it may be appropriate for states to provide a true-up of interim number portability costs from that date through the effective date of a state-approved cost recovery program. To provide the states with the flexibility during the interim period to continue using a variety of cost recovery approaches, the Commission did not adopt a fixed cost recovery mechanism. Instead, it adopted guidelines for the states to follow in mandating cost recovery for interim number portability. The Commission recognizes, however, that a significant period of time may have elapsed before each state adopted a cost recovery mechanism for interim number portability. Thus, absent a true-up from the effective date of the *First Report and Order*, the benefits of a competitively neutral cost recovery mechanism for interim number portability may be lost for many new entrants if they have been paying cost recovery amounts in excess of what would be allowed under the competitive guidelines of the *First Report and Order*. The Commission notes that several state arbitration decisions have adopted a true-up approach pending the adoption of a state-approved cost recovery mechanism. The Commission strongly encourages states to review their cost recovery mechanisms. Consistent with its competitive neutrality principles, the Commission encourages states to adopt a true-up of amounts paid for interim number portability between August 26, 1996 and the date the state-approved cost recovery program takes effect, to the extent such amounts exceed what would have been paid under the state-approved plan, had it been in effect.

G. Terminating Access Charges

1. Background

61. In the *First Report and Order*, the Commission stated that terminating access charges for calls forwarded from an incumbent LEC to a competing provider through the use of a interim number portability method should be shared between the incumbent LEC, which is the donor switch and the terminating switch carrier. A ''donor'' switch is the end office switch to which the called telephone number was originally assigned. The Commission stated that the ''overarching principle'' in such billing arrangements was that carriers were to share in the access revenues for a ported call, because neither the incumbent LEC forwarding carrier nor the terminating carrier provides all the facilities used to terminate a ported call. The Commission also held that incumbent LECs and new entrants should assess their terminating access charges on IXCs through meet-point billing arrangements. MCI asserts that, regardless of what type of billing arrangement is adopted, IXCs should not be charged increased access charges as a result of the additional call routing and associated costs necessary to terminate a call to a ported number under interim number portability measures.

2. Discussion

62. IXCs currently pay LECs access charges for terminating calls on LEC switches. In a competitive local exchange market, an IXC terminating a call to a long distance customer that has ported his or her number to a new entrant will terminate the call to the incumbent LEC's switch, which then will forward it to the new entrant's switch utilizing interim number portability measures. Under this scenario, incumbent LECs and new entrants both provide facilities used to terminate calls to ported numbers using interim number portability. In the *First Report and Order*, the Commission required both forwarding and terminating carriers to assess charges on IXCs for terminating access through meet-point billing arrangements. In requiring that these revenues be shared, the Commission left to the carriers whether ''each issues a bill for access on a ported call, or whether one of them issues a bill to the IXCs covering all of the transferred calls and shares the correct portion of the revenues with the other carriers involved.'' The Commission further provided that, if carriers determine it more efficient to issue individual bills, the forwarding carrier must ''provide the terminating carrier with the necessary information to permit the terminating carrier to issue a bill.''

63. The Commission finds that the additional costs that local exchange carriers may incur should not be included in the access charges paid by IXCs for terminating long-distance calls because any additional routing and transport costs that are a result of interim number portability are incremental costs of providing number portability. Such costs may be recovered through a local number portability cost recovery mechanism, or borne by the local exchange carrier that forwards the call, as determined by the state, on a competitively neutral basis. Because they are telecommunications carriers, IXCs may be required to contribute to the costs of interim number portability through the cost recovery mechanism adopted by state commissions. The Commission clarifies that, to prevent double recovery on the part of the terminating switch carrier, new entrants receiving a portion of access charges from IXCs for terminating calls may not also impose terminating charges on the incumbent LEC.

64. As discussed in the *First Report and Order*, carriers may incur incremental costs for forwarding calls when utilizing interim number portability. MCI requests that the Commission clarify what is included in these incremental costs and, thus, what should be shared by all carriers on a competitively neutral basis. The incremental costs of providing number portability via RCF, DID, or other comparable technically feasible measures are the costs that the forwarding carrier incurs in forwarding the call that it would not incur if it did not forward the call. As mentioned in the *First Report and Order*, such costs may differ depending on where the call originates within the network, and on the type of technology utilized to forward the call. Thus, the Commission

declines to list each potential additional cost that may be incurred and who should be allowed to bill for those incremental costs.

65. Finally, the Commission notes that it has ''not foreclose[d] arrangements in which one exchange carrier bills the entire amount [of access charges] and remits the other exchange carrier its share.'' The *First Report and Order* does not require that the carrier that owns the donor switch and the carrier that owns the terminating switch each issue a separate bill to the IXC. The *First Report and Order* states that ''it is up to the carriers whether they each issue a bill for access on a ported call, or whether one of them issues a bill to the IXCs covering all of the transferred calls and shares the correct portion of the revenues with the other carriers involved.'' Thus, either the carrier that owns the donor switch or the carrier that owns the terminating switch may bill the entire amount of access charges and remit to the other local exchange carrier its share of the invoiced charges. In short, the *First Report and Order* does not prohibit carriers who mutually agree from sending one bill to the IXC and then splitting the access charges appropriately between themselves.

H. Modification of Billing Systems to Accommodate the Sharing of Access Charges in Meet-Point Billing Type Arrangements

1. Background

66. In the *First Report and Order*, the Commission concluded that meet-point billing between neighboring incumbent LECs provides the appropriate model for the proper access billing arrangement for interim number portability. In complying with the Commission's directive that forwarding and terminating carriers share access revenues received from IXCs for ported calls through meet-point billing arrangements, GTE argues that LECs should not be required to modify their billing systems.

2. Discussion

67. The *First Report and Order* did not specify whether carriers must modify their billing systems in order to accommodate the requirement that access charges be shared in meet-point billing type arrangements. It requires that the forwarding carrier provide ''the necessary information to permit the terminating carrier to issue a bill,'' but does not specify whether carriers have to make modifications in their billing systems in order to do so. The Commission agrees with GTE and Time Warner that it would not be cost effective to require carriers to modify their billing systems to accommodate interim number portability. It does not require carriers to modify their billing systems to track and record the details of every call. It does require, however, that carriers adopt some method of implementing its requirement to share terminating access revenues, by, for example, providing information about PIU (percent interstate usage), traffic samples, or total access charges per line.

68. If carriers cannot agree on appropriate meet-point billing arrangements, the Commission agrees that this issue may be included in mediation or arbitration before a state commission, or be subject to other dispute resolution processes chosen by the carriers involved. The Commission rejects GTE's suggestion, however, that parties seek informal assistance from the Commission as a means of resolving meet-point billing arrangement disputes. Also, if a meet-point billing arrangement dispute arises in the context of an interconnection request made pursuant to section 251, the 1996 Act clearly places the responsibility for arbitration and/or mediation of unresolved issues on the state commissions.

IV. Supplemental Regulatory Regulatory Flexibility Analysis

69. As required by the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 601 *et seq.* (the RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104–121, 110 Stat. 847 (1996) (CWAAA); Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *First Report and Order*. In addition, the Commission sought comments on the proposals included in the Initial Regulatory Flexibility Analysis (IRFA) in the *First Report and Order*. The Commission incorporated a Final Regulatory Flexibility Analysis in the *Third Report and Order*. The additional Regulatory Flexibility Analysis in this *Fourth Memorandum Opinion and Order* is as follows:

70. *Need for and Objectives of Action:* The Commission, in compliance with sections 251(b)(2), 251(d)(1), and 251(e)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, adopted rules and procedures in the *Third Report and Order* that are intended to ensure the implementation of telephone number portability with the minimum regulatory and administrative burden on telecommunications carriers. Congress has recognized that number portability will lower barriers to entry and promote competition in the local exchange marketplace. To prevent the cost of number portability from itself becoming a barrier to local competition, section 251(e)(2) requires that ''[t]he 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.'' The Commission issued this *Fourth Memorandum Opinion and Order* to address issues relating to cost recovery for interim number portability. Interim number portability utilizes an interim method to allow consumers to change carriers while retaining their telephone numbers before long-term number portability becomes available.

71. *Summary of Significant Issues Raised by the Public Response to the FRFA:* There were no comments submitted specifically in response to the Regulatory Flexibility Analysis. In the *Third Report and Order*, the Commission adopted rules and regulations to ensure that the way all telecommunications carriers, including small entities, bear the costs of number portability does not significantly affect any carrier's ability to compete with other carriers for customers in the marketplace. This *Fourth Memorandum Opinion and Order* addresses issues relating to cost recovery for interim number portability. It affirms the Commission's conclusion that it has the authority to establish cost recovery guidelines for interim number portability. Second, the Commission rejects claims that the cost recovery guidelines for interim number portability set forth in the *First Report and Order* are arbitrary and capricious, or constitute an unconstitutional taking. The item denies the request that these cost recovery guidelines be applied retroactively. The item affirms the Commission's earlier decision to adopt general cost recovery guidelines for interim number portability while allowing states flexibility to continue using a variety of cost recovery approaches that are consistent with its guidelines. Finally, the item clarifies issues relating to terminating access charges, modification of billing systems, and the competitive neutrality of certain cost recovery allocators, as each of these issues relates to interim number portability.

72. *Description and Estimate of Number of Small Businesses to Which Actions Will Apply:* The Regulatory

Flexibility Act generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act. *See* 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). *Id.* According to SBA's regulations, entities engaged in the provision of telephone service may have a maximum of 1,500 employees in order to qualify as a small business concern. *See* 13 CFR 121.201. This standard also applies in determining whether an entity is a small business for purposes of the RFA.

73. As described in the previous Regulatory Flexibility Analysis contained in the *Third Report and Order*, the Commission's rules governing number portability cost recovery apply to all telecommunications carriers, including incumbent LECs, new LEC entrants, and IXCs, as well as cellular, broadband PCS, and covered SMR providers. Small incumbent LECs subject to these rules are either dominant in their filed of operations or are independently owned and operated, and, consistent with the Commission's prior practice, are excluded from the definition of ''small entities'' and ''small business concerns.'' *See In re* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499, 16144–45, 16149–50 (1996), *vacated in part, aff'd in part, Iowa Utils. Bd.* v. *FCC*, 120 F.3d 753 (8th Cir. 1997), *rev'd in part, aff'd in part and remanded sub nom. AT&T Corp.* v. *Iowa Utils. Bd.*, 119 S.Ct. (1998). Accordingly, the Commission's use of the terms ''small entities'' and ''small businesses'' does not encompass small incumbent LECs. *Local Competition Order*, 11 FCC Rcd at 16,150. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, *see* 13 CFR 121.902(b)(4), the Commission will consider small incumbent LECs within this analysis and use the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by the SBA as ''small business concerns.''

74. Insofar as the Commission's rules apply to all telecommunications carriers, they may have an economic impact on a substantial number of small businesses, as well as on small incumbent LECs. The rules may have an impact upon new entrant LECs and small incumbent LECs, as well as cellular, broadband PCS, and covered SMR providers. Based upon data contained in the most recent census and a report by the Commission's Common Carrier Bureau, the Commission estimates that 2,100 small entities could be affected. The Commission has derived this estimate based on the following analysis.

75. According to the 1992 Census of Transportation, Communications, and Utilities, there were approximately 3,469 firms with under 1,000 employees operating under the Standard Industrial Classification (SIC) category 481—Telephone. *See* U.S. Dept. of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities (issued May 1995). Many of these firms are the incumbent LECs and, as noted above, would not satisfy the SBA definition of a small business because of their market dominance. There were approximately 1,350 LECs in 1995. Industry Analysis Division, FCC, Carrier Locator: Interstate Service Providers at Table 1 (Number of Carriers Reporting by Type of Carrier and Type of Revenue) (December 1995). Subtracting this number from the total number of firms leaves approximately 2,119 entities which potentially are small businesses which may be affected. This number contains various categories of carriers, including small incumbent LECs, competitive access providers, cellular carriers, interexchange carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. Some of these carriers, although not dominant, may not meet the other requirement of the definition of a small business because they are not ''independently owned and operated.'' *See* 15 U.S.C. 632(a)(1). For example, a PCS provider that is affiliated with a long distance company with more than 1,500 employees would not meet the definition of a small business. Another example would be if a cellular provider is affiliated with a dominant LEC. Thus, a reasonable estimate of the number of ''small businesses'' affected by this item would be approximately 2,100.

76. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rules:* The *Fourth Memorandum Opinion and Order* provides guidance regarding issues relating to cost recovery for interim number portability. This *Fourth Memorandum Opinion and Order* affirms the Commission's conclusion that it has the authority to establish cost recovery guidelines for interim number portability. Second, the Commission rejects claims that the cost recovery guidelines for interim number portability set forth in the *First Report and Order* are arbitrary and capricious, or constitute an unconstitutional taking. This item denies the request that these cost recovery guidelines be applied retroactively. This item affirms the Commission's earlier decision to adopt general cost recovery guidelines for interim number portability while allowing states flexibility to continue using a variety of cost recovery approaches that are consistent with its guidelines.

77. *The Fourth Memorandum Opinion and Order* also confirms an earlier Commission decision that a cost recovery mechanism based on a carrier's gross revenues is an acceptable means of allocating costs among carriers. It states that no additional recordkeeping will be required for this option of recordkeeping, because such gross revenue reporting is readily available through such things as tax filings, annual reports and SEC filings, which are developed for other purposes. The item does not require carriers to adopt any one billing arrangement for sharing costs when they forward calls while utilizing interim number portability. The item allows carriers to determine the best method of splitting these costs between them, but requires them to adopt some method of sharing terminating access revenues. Additionally, it affirms the Commission's earlier determination that meet-point billing between neighboring incumbent LECs provides the appropriate model for the proper access billing arrangement for interim number portability, but states that carriers are not required to modify their billing systems to track and record the details of every call.

78. *Steps Taken to Minimize Impact on Small Entities Consistent With Stated Objectives:* The record in this proceeding indicates that the need for customers to change their telephone numbers when changing local service providers is a barrier to local competition. Requiring number portability, and ensuring that all telecommunications carriers bear the costs of number portability on a competitively neutral basis, will make it easier for competitive providers, many of which may be small entities, to enter the market. The Bureau has attempted to keep regulatory burdens on all local exchange carriers to a minimum to ensure that the public receives the benefits of the expeditious provision of service provider number portability in accordance with the statutory requirements. For example, the *Fourth Memorandum Opinion and Order* affirms the Commission's earlier determination that meet-point billing

between neighboring incumbent LECs provides the appropriate model for the proper access billing arrangement for interim number portability, but states that carriers are not required to modify their billing systems to track and record the details of every call. Such determination recognizes that number portability will cause some carriers, including small entities, to incur costs that they would not ordinarily have incurred in providing telecommunications services, but attempts to keep such costs to a minimum.

79. *Report to Congress:* The Commission will send a copy of this *Fourth Memorandum Opinion and Order,* including this supplemental RFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). A copy of the *Third Report and Order* and this supplemental FRFA (or summaries thereof) will be sent to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 604(b).

80. *Paperwork Reduction Act:* This *Fourth Memorandum Opinion and Order* provides guidance regarding issues relating to cost recovery for interim number portability. The *Third Report and Order* concluded that carriers may recover the portion of their number portability joint costs that is demonstrably an incremental cost incurred in the provision of number portability. *Third Report and Order,* 13 FCC Rcd at 11,740, para. 73. The *Third Report and Order* also requires incumbent LECs that choose to recover their carrier-specific costs directly related to providing number portability to use federally-tariffed end-user charges. *Id.* at 11,776. The Commission also concluded that carriers may identify only those incremental overheads that they can demonstrate were incurred specifically in the provision of number portability. *Id.* at 11,740. In this *Fourth Memorandum Opinion and Order,* the Commission affirms its earlier decision that it has the authority to establish cost recovery guidelines for interim number portability. Second, the Commission rejects claims that the cost recovery guidelines for interim number portability set forth in the *First Report and Order* are arbitrary and capricious, or constitute an unconstitutional taking. This item denies the request that these cost recovery guidelines be applied retroactively. The item affirms the Commission's earlier decision to adopt general cost recovery guidelines for interim number portability while allowing states flexibility to continue using a variety of cost recovery approaches that are consistent with its guidelines. The item also confirms an earlier Commission decision that a cost recovery mechanism based on a carrier's gross revenues is an acceptable means of allocation costs among carriers. The item states that no additional recordkeeping will be required for this option of recordkeeping, because such gross revenue reporting is readily available through such things as tax filings, annual reports and SEC filings, which are developed for other purposes. The item does not require carriers to adopt any one billing arrangement for sharing costs when they forward calls while utilizing interim number portability. The item allows carriers to determine the best method of splitting these costs between them, but requires them to adopt some method of sharing terminating access revenues. Additionally, the item affirms the Commission's earlier determination that meet-point billing between neighboring incumbent LECs provides the appropriate model for the proper access billing arrangement for interim number portability, but states that carriers are not required to modify their billing systems to track and record the details of every call. These information collection requirements are contingent upon approval of the Office of Management and Budget (OMB).

V. Ordering Clauses

81. Accordingly, *it is ordered* that pursuant to authority contained in sections 1, 2, 4(i), 201–205, 215, 251(b)(2), 251(e)(2), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201–205, 215, 251(b)(2), 251(e)(2), and 332, and Parts 1, 20 and 52 of the Commission's rules, 47 CFR 1.106, 20, and 52, the Petitions for Reconsideration and/or Clarification *are granted* to the extent indicated herein and otherwise *are denied.*

82. *It is further ordered* that the Motion to Accept Late-filed Comments of Telecommunications Resellers Association and the Motion to Accept Late-Filed Reply Comments of US WEST *are granted.*

83. *It is further ordered* that the Commission's Office of Public Affairs Reference Operations Division *shall send* a copy of this *Memorandum Opinion and Order* including the supplemental Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 52

Communications, Common Carriers, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–22131 Filed 8–25–99; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61, 63 and 69

[CC Docket No. 98–131; FCC 99–173]

1998 Biennial Regulatory Review

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Section 11 of the Communications Act of 1934, as amended (Act), requires that the Commission, in every even-numbered year beginning in 1998, review all regulations that apply to the operations and activities of any provider of telecommunications service and determine whether any of these regulations are no longer necessary in the public interest as the result of meaningful economic competition between providers of the service. As part of its 1998 biennial regulatory review, the Commission revised part 61 to, among other things, eliminate several rules that no longer seem to serve any useful purpose, and to reorganize part 61 to clarify which rules apply to which carriers.

DATES: Effective September 27, 1999.

FOR FURTHER INFORMATION CONTACT: Judy Nitsche, Chief, Tariff and Pricing Analysis Branch, Competitive Pricing Division, Common Carrier Bureau, (202) 418–1540.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order and First Order on Reconsideration, adopted July 13, 1999, and released August 3, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th St., S.W., Washington, D.C. 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, 1231 20th St., N.W., Washington, D.C. 20036.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, as