MAJOR MILESTONES AND PRELIMINARY COMPLETION DATE—Continued

Milestone	Completion date
10. Reassess risks of the wastewaters; interim Report to Congress on risk results	April 1997–December 1999.
11. Combine risk results with regulatory review results, develop report recommendations, write draft report.	January 2000–July 2000.
12. Conduct review and finalize report	August 2000–March 2001.

Dated: July 18, 1996.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 52

[CC Docket No. 95–116; FCC 96–286]

Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: On July 13, 1995, the Commission issued a Notice of Proposed Rulemaking (CC Docket No. 95–116) seeking comments on a wide variety of policy and technical issues related to number portability. On June 27, 1996, the Commission adopted a First Report and Order which is published elsewhere in this issue. On the same day, the Commission adopted a Further Notice of Proposed Rulemaking (Further Notice or FNPRM) seeking comment on the appropriate methods of cost recovery of long-term number portability. Since the Telecommunications Act of 1996 requires that the costs of number portability be borne by all telecommunications carriers on a competitively neutral basis, the Commission will determine the appropriate method of cost recovery in this proceeding.

DATES: Comments are due on or before August 16, 1996, and reply comments are due on or before September 16, 1996.

ADDRESSES: Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554, with a copy to Wanda Harris of the Competitive Pricing Division of the Common Carrier Bureau, 1919 M Street, NW., Room 518, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Neil Fried, Attorney, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking June 27, 1996, and released July 2, 1996 (FCC 96–286). This FNPRM contains no proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). The full text of this Further Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc96286.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington, DC 20037.

Initial Regulatory Flexibility Analysis

Pursuant to section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in the Further Notice of Proposed Rulemaking. The IRFA is set forth in Appendix C of the FNPRM. The Commission, in compliance with sections 251(b)(2) and 251(d)(1) of the Act, proposes rules necessary to implement section 251(e)(2) of the Act, which requires that the costs of number portability be borne by all telecommunications carriers on a competitively neutral basis. The Commission's objective in issuing the FNPRM is to propose and seek comment on rules establishing a cost recovery mechanism for carriers to use in implementing a long-term number portability method pursuant to the Act and in accordance with the First Report and Order in this proceeding. Specifically, the Commission's goal is to propose rules which implement section 251(e)(2) of the Act, requiring that the cost of ''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). The legal basis for action as proposed in the FNPRM is contained in sections 1, 4(i), 4(j), 201–205, 218, 251(b), 251(e), and 332 of the Communications Act of 1934, as amended. 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 251(b), 251(d), 251(e), The Commission's proposed rules governing cost recovery for long-term number portability apply to all LECs, including incumbent LECs as well as new LEC entrants, and also apply to cellular, broadband PCS, and covered SMR providers. According to the SBA definition, incumbent LECs do not qualify as small businesses because they are dominant in their field of operation. However, the proposed rules may have a significant economic impact on a substantial number of small businesses insofar as they may apply to telecommunications carriers other than incumbent LECs. The proposed rules may have such an impact upon new entrant 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 carriers could be affected. The Commission requests comment on this estimate. These entities could include various categories of carriers, including competitive access providers, cellular carriers, interexchange carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. The FNPRM requests comment on the appropriate method by which the costs of long-term number portability should be recovered. One possible cost recovery method would be based upon a percentage of a carrier's gross revenues. Such a rule, if promulgated, would not impose a reporting requirement on LECs because they already file information about gross revenues with the Commission for other purposes. There are no other reporting requirements contemplated by the FNPRM. There are no federal rules

which overlap, duplicate or conflict with these proposed rules.

Synopsis of Further Notice of Proposed Rulemaking

Further Notice of Proposed Rulemaking

I. Long-Term Number Portability—Costs and Cost Recovery

A. Background

1. In the *NPRM* (Telephone Number Portability, Notice of Proposed Rulemaking, 60 FR 39136 (August 1, 1995)), we requested comment on appropriate cost recovery mechanisms regarding long-term number portability. We also sought comment, data, studies, and other information on the costs associated with designing, building, and deploying long-term number portability. Section 251(e)(2) of the 1996 Act requires, *inter alia*, that the costs of number portability be borne by all telecommunications carriers on a competitively neutral basis.

B. Positions of the Parties

2. In response to the July *NPRM*, many parties assert that the costs of number portability cannot be estimated until the industry adopts a particular architecture. While the incumbent LECs generally urge the Commission to continue to gather information concerning the potential costs and impacts on existing networks from ongoing state activities, a few parties offer rough estimates regarding the costs of implementing long-term number portability. We note that many of these estimates assume a significant level of location portability.

3. The incumbent LECs generally assert that the costs of providing long-term number portability should be borne on a ''competitively neutral'' basis by those carriers that cause or benefit from number portability. They assert that specific cost recovery mechanisms cannot be established until a better understanding is developed regarding how number portability should be provided. Ameritech, however, proposes a cost recovery structure with three categories of costs: (1) Administrative and overhead costs for SMS/databases—to be recovered from all providers; (2) costs directly assignable to number portability deployment—to be recovered from all LECs, both incumbents and new entrants, in proportion to the amount of telephone numbers that each has transferred to its switches; and (3) costs incurred to increase the capacity of existing infrastructure—to be borne mostly by incumbent LECs. Some incumbent LECs also contend that the costs of deploying long-term number portability should be allocated between state and federal jurisdictions.

4. Most other parties generally contend that all telecommunications carriers and their customers should bear the costs of long-term number portability because they all benefit from the service and price competition stimulated by portability. Non-LEC parties generally contend that carrier-specific costs incurred in adapting existing systems to long-term number portability should be recovered, like other network upgrades such as AIN and SS7, through tariff and contract mechanisms. Sprint and AT&T advocate implementing portability on a region-by-region basis (with costs amortized over several years) to minimize incumbent carriers' greater burdens for upgrading existing networks. Several parties also contend that the external costs of long-term number portability, i.e., the costs of designing, deploying, and operating facilities common to all carriers, should be shared equitably among all affected carriers. Parties offer several different methods of allocating costs among the relevant carriers.

5. After passage of the 1996 Act, and in response to the March Public Notice, several parties addressed the meaning of the statutory language ''competitively neutral'' as set forth in section 251(e)(2). Ameritech asserts that this standard requires that all costs be allocated to all telecommunications carriers on a basis that is independent of who incurred the cost or who uses portability, and that gives no competitor an advantage. Ameritech criticizes proposals that would limit or exclude recovery of costs incurred by incumbent LECs or allocate costs based on lines. BellSouth urges the Commission to consider the types of infrastructure costs that all classes of carriers will bear in implementing number portability, not just incumbent LECs, in order to avoid imposing large financial burdens on any particular class of carriers, especially those not required to participate in portability. GTE and Pacific Bell argue that requiring each carrier to bear its own costs would result in incumbent LECs paying most of the implementation costs, which is not competitively neutral.

6. In contrast, ALTS, Omnipoint, and Cox maintain that competitive neutrality requires each carrier to bear its own costs, and that no carrier should be required to pay for upgrades to another carrier's network. Moreover, Cox argues that incumbent LEC proposals to require that the new entrants bear all number portability costs are not competitively neutral because it would unreasonably burden those carriers. In addition, Cox asserts that, because new entrants will begin providing service at different times, it would be difficult to allocate costs on a competitively neutral basis unless each carrier bears its own costs of implementation. Omnipoint asserts that requiring carriers to compensate other carriers with less efficient systems and networks is competitively unfair.

7. US West advocates permitting LECs to recover their costs using a per-line surcharge, claiming that all carriers are entitled to recover their implementation costs under the 1996 Act. GTE suggests establishment of a ''cost pool,'' under which each subscriber would be assessed an amount, regardless of which carrier it used. Bell Atlantic claims that allowing incumbent LECs to recover their costs only from their customers, and not from other providers, is not competitively neutral because costs would be recovered only from those end users who do not use or benefit from portability, and higher incumbent LEC rates would encourage their customers to switch providers. USTA cautions that not permitting carriers to recover their costs through separate charges for number portability will result in an across-the-board increase in local rates, which, for incumbent LECs, must be approved by state regulators.

8. In contrast, MFS maintains that the competitive neutrality requirement does not apply to end users at all, but rather requires an analysis of charges assessed to other, competing telecommunications carriers. Teleport argues that number portability costs should not be recovered from customers through a number portability surcharge, as such charges would deter customers from transferring their numbers. Cox asserts that GTE's pooling argument is not competitively neutral because it would create incentives for incumbents to inflate costs.

9. MFS argues that the competitive neutrality standard in the 1996 Act requires that only the shared/common costs be borne by all telecommunications carriers, and that such allocation should be done based on net revenues. It notes that all telecommunications users should not be interpreted to mean only a segment of the market, a single class of carriers, or a single class of customers. MFS further argues that the shared/common costs could be recovered from each carrier's customer base, but not from other carriers in the form of increased charges. TRA contends that section 251(e)(2) contemplates a competitively fair distribution of the common costs associated with number portability

among only those carriers engaged in the provision of local exchange/exchange access services, not a general levy on all telecommunications providers. Teleport and Time Warner Holdings propose similar cost recovery mechanisms to MFS, but argue that the shared costs should be allocated based on the number of lines served, rather than net revenues. ALTS argues that, in order to expedite the implementation of number portability, shared/common costs (e.g., costs associated with the number portability database(s)) should be recovered by a third party from all carriers on a per line basis, but notes that there is considerable economic logic in recovering such costs according to net revenues.

C. Discussion

10. We tentatively conclude that three types of costs are involved in providing long-term service provider portability: (1) Costs incurred by the industry as a whole, such as those incurred by the third-party administrator to build, operate, and maintain the databases needed to provide number portability; (2) carrier-specific costs directly related to providing number portability (*e.g.*, the costs to purchase the switch software implementing number portability); and (3) carrier-specific costs not directly related to number portability (*e.g.*, the costs of network upgrades necessary to implement a database method). We seek comment on this tentative conclusion and ask whether other types of costs are involved in the provision of long-term service provider number portability.

11. New section 251(e)(2) of the Communications Act requires that the costs of establishing ''number portability be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.'' We tentatively conclude that the ''competitively neutral'' standard in section 251(e)(2) applies only to number portability costs, and not to cost recovery of carrier-specific, non-number portability-specific costs, such as upgrades to SS7 or AIN technologies. This interpretation is borne out by the plain language of the statute, which only requires that telecommunications carriers bear the costs of number portability. We also tentatively conclude that section 251(e)(2) does not address recovery of those costs from consumers, but only the allocation of such costs among carriers. We seek comment on these tentative conclusions. We also seek comment on the meaning of the statutory language ''all telecommunications carriers'' as that term is used in section 251(e)(2). We further seek comment on whether the Commission has authority to exclude certain groups of telecommunications carriers from the cost recovery mechanisms for number portability, and, if so, which carriers should be excluded.

12. In determining the cost recovery mechanism for currently available number portability measures, we set forth principles with which any competitively neutral cost recovery mechanism should comply. Specifically, we required that (1) 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; and (2) a competitively neutral cost recovery mechanism should not have a disparate effect on the ability of competing service providers to earn a normal return. As in the case of currently available number portability measures, we believe that these principles equally apply to the allocation of costs incurred due to the implementation of long-term number portability. We, therefore, tentatively conclude that any long-term cost recovery method should comply with these principles. We seek comment on this tentative conclusion.

13. Pursuant to the requirement of section 251(e)(2) that number portability costs be borne by all telecommunications carriers on a competitively neutral basis as determined by this Commission, we must establish pricing principles that are applied consistently to all carriers. Consequently, we tentatively conclude that the pricing for state-specific databases should be governed by the pricing principles established in this proceeding. We believe the use of our pricing mechanism—even in states that opt out of the regional database system—will help to maintain consistency between states, thereby improving the likelihood that competition will develop nationwide.

a. Costs of Facilities Shared by All Carriers for the Provision of Number Portability

14. The costs of facilities shared by all telecommunications carriers for providing long-term number portability include, for example, the costs of building and administering regional databases. We seek comment on whether the database administrator(s) selected through the NANC should recover the costs of facilities shared by all telecommunications carriers for the provision of long-term number portability through a charge assessed only on those carriers using the databases or on all carriers whether or not they use the databases. We note that if a regional database consists only of the SMS, usage would consist of uploading and downloading number portability routing information. However, to the extent a database architecture is chosen that utilizes an SMS/SCP pair, usage additionally may include carrier queries to the regional SCP for purposes of providing routing instructions to carriers for individual calls. We seek comment on whether such costs, if recovered from all carriers, should be recovered on a nationwide or regional basis, and how they should be recovered on such bases. To the extent such costs are recovered on a nationwide basis, and multiple entities are selected to administer the regional databases, we seek comment on whether either one of the neutral third-party administrators or a separate entity should be designated to allocate the aggregate costs among each telecommunications carrier and determine the method by which such payments should be made.

15. With regard to those carriers responsible for bearing the costs of the shared facilities, we tentatively conclude that the recovery of the costs associated with these databases should be allocated in proportion to each telecommunications carrier's total gross telecommunications revenues minus charges paid to other carriers. We believe that the use of gross telecommunications revenues to allocate costs best comports with our principles for competitively neutral cost recovery set forth above. As we indicated in our discussion of currently available number portability measures, such allocator would not give any provider an appreciable, incremental cost advantage over another service provider, nor have a disparate effect on the ability of competing service providers to earn a normal return. In addition, gross telecommunications revenues are the least distortionary, among practical applications, of allocating costs across telecommunications carriers. We also believe it is appropriate to subtract out charges paid to other carriers, such as access charges, when determining the relevant amount of each carrier's telecommunications revenues for purposes of cost allocation. This is because the revenues attributable to such charges effectively would be counted twice in determining the relative number portability costs each carrier should pay—once for the carrier

paying such charges and once for the carrier receiving them. We believe that a reasonable, equitable, and competitively neutral measure of the competitive benefits which will result from number portability is each telecommunications carrier's gross telecommunications revenues minus charges to other telecommunications carriers. We seek comment on whether this proposal for recovery of the costs associated with regional databases comports with the standard set forth in section 251(e)(2), and whether there exists alternative ways of allocating this type of cost among the relevant carriers.

16. We currently require the NANPA to recover the costs of administering the NANP, and operating databases to perform such administration, from all telecommunications carriers. The recovery of these costs is allocated among all telecommunications carriers based on the carriers' gross revenues. In our recent *Interconnection NPRM* (61 FR 18311 (April 25, 1996)), we tentatively concluded that we need not take any further action to comply with section 251(e)(2)'s mandate that the cost of establishing telecommunications numbering administration arrangements be borne by all telecommunications carriers on a competitively neutral basis, in light of the action taken in the *Numbering Plan Order* (60 FR 38737 (July 28, 1996)).

17. With the implementation of long-term number portability measures, all carriers, including currently regulated incumbent LECs, will incur costs specific to the deployment and usage of number portability databases. Therefore, we seek comment on whether incumbent LECs should be able to recover their portion of the costs of facilities shared by all carriers in providing long-term number portability from their end users or from other carriers, and whether the Commission should prescribe the particular cost recovery mechanism. To the extent parties argue that such costs should be recovered from other carriers, we seek comment on whether such carriers should include all telecommunications carriers, such as other local exchange providers, CMRS providers, IXCs, and resellers, or only those carriers that have received ported numbers. In addition, assuming that we prescribe a particular recovery mechanism, we ask parties to identify alternative ways carriers may recover this type of cost from carriers (or end users).

18. We tentatively conclude the number portability costs of facilities shared by all carriers fall into three subcategories: (a) Non-recurring costs, including the development and implementation of the hardware and software for the database; (b) recurring (monthly or annually) costs, such as the maintenance, operation, security, administration, and physical property associated with the database; and (c) costs for uploading, downloading, and querying number portability database information. We seek comment on this tentative conclusion and ask whether there are other types of costs associated with the facilities that will be shared by all carriers.

19. We seek comment on whether the first two subcategories, non-recurring and recurring costs, should be recovered through monthly charges to the individual carriers using the database, allocated in proportion to each carrier's gross telecommunications revenues net of payments to other carriers, or from all carriers operating in areas where number portability is offered. We note that non-recurring charges could be recovered in a one-time payment or over time.

20. We believe that there are at least two methods for recovering the third subcategory of shared costs, *i.e.*, the costs of uploading, downloading, or querying the database. First, these costs could be recovered through usage charges assessed on those carriers that either access the database to upload number portability routing information, download such information, or directly query the database. Those carriers, including IXCs, could then either recover such costs from their own customer base, or choose not to recover such costs.

21. Second, the upload, download, and/or per-query costs could be folded into the monthly charges assessed on the carriers using the databases, which would be allocated in proportion to each carrier's gross telecommunications revenues. We believe this approach is most appropriate in those instances where it is not practical to determine the cost causer of the usage costs, *e.g.*, per-query costs. Under current database approaches, there is no direct correlation between the number of queries made and the number of telephone numbers that have been forwarded because queries will be performed on all calls to a particular switch once any single number has been transferred from that switch. We invite commenting parties to provide credible, substantiated estimates of the amount of the usage costs, including upload, download, and per-query costs, to the extent applicable, and whether such costs will be incurred on a per-minute, per-call, or other basis. We also seek comment on these and alternative methods for recovering per-query costs. Parties are asked to state with specificity the advantages and disadvantages of each.

22. In accordance with the 1996 Act, the costs of number portability are to be recovered from all telecommunications carriers on a competitively neutral basis. We seek comment on what steps we need to take to ensure that this requirement is satisfied for all shared industry costs. For instance, we seek comment on whether it is necessary for the Commission to establish a mechanism to ensure that the LNPA(s) recovers its costs in a competitively neutral fashion. We also seek comment on what mechanism(s), *e.g.*, federal tariffs, periodic reports, etc., should be utilized to ensure compliance with the statutory requirement and under what authority the Commission can impose such obligations. We note that section 251(e)(1) requires the Commission to create or designate one or more impartial entities to administer telecommunications numbering, and provides the Commission with exclusive jurisdiction over the NANP, and section 251(e)(2) gives the Commission the authority to establish rules by which carriers must bear the costs of telecommunications numbering administration and number portability. We seek comment on the relevance of these provisions to the Commission's authority to impose obligations on the LNPA(s).

b. Direct Carrier-Specific Costs to Implement Number Portability

23. Carrier-specific costs directly related to number portability include, for example, the costs of purchasing the switch software necessary to implement a long-term number portability solution. There are at least two ways of allocating these carrier-specific costs. First, we could require individual carriers to bear their own costs of deploying number portability in their networks. Second, we could require all carriers in a given region to pool their number portability costs, which then would be spread across all carriers providing and using number portability based on some allocator, such as gross telecommunications revenues or number of subscriber lines. We seek comment on whether this proposal comports with the standard set forth in section 251(e)(2), and whether there exist alternative ways of allocating this type of cost among the relevant carriers.

24. We seek comment on whether we can and should mandate a mechanism by which incumbent LECs or others then may recover these costs, from either end users or other carriers (such as other local exchange service

providers, CMRS providers, IXCs, and resellers), and ask that parties identify the jurisdictional basis for such authority.

25. If the Commission were to permit costs to be recovered from consumers, there are at least two options. One option would be to allow carriers the flexibility to recover their number portability-specific costs from their customers in whatever manner the carrier chooses. A second option would be to require carriers to recover their number portability-specific costs through a number portability charge assessed on their end user customers located in areas where number portability is available. We seek comment on the advantages and disadvantages of these proposals and any alternative mechanisms for recovering these costs from consumers. Parties favoring a specific option should comment on whether their preferred approach is consistent with principles of competitive neutrality.

26. We note that several additional issues are raised if the carrier-specific, number portability-specific costs are to be passed on to consumers. Therefore, we seek comment on whether, under any cost recovery mechanism, the cost to consumers should: (1) Vary among carriers in a given geographic region; (2) remain constant among all carriers in a given geographic region; or (3) vary among different geographic regions, *e.g.*, states or LATAs (while remaining constant within that region, *i.e.*, state or LATA). For each of these approaches, we ask whether the costs to consumers should be permitted to change, for example, on a monthly or annual basis. We also seek comment on whether carriers should charge their customers a single, one-time charge, a monthly fee, or some percentage of the customer's monthly bill, to recover their carrier-specific number portability-specific costs. To the extent this Commission permits carriers to recover their costs through use of a number portability charge, we seek comment on whether such a charge should be specifically identified on consumer bills from those carriers as a separate line item. We seek comment on whether any such charge should be filed as a tariff at either the federal or state level.

27. Finally, we seek comment on whether carriers should be permitted to recover carrier-specific, number portability-specific costs from other carriers, through increases in charges for regulated services. Parties that advocate increases in charges for regulated services are asked to specify which charges should be increased and under what jurisdictional authority the Commission can prescribe such increases.

c. Indirect Carrier-Specific Costs to Implement Number Portability

28. We tentatively conclude that carrier-specific costs not directly related to number portability should be borne by individual carriers as network upgrades. As such, carrier-specific costs not directly related to number portability are not subject to the requirements set forth in section 251. We seek comment on this tentative conclusion and on alternative methods for recovering this type of cost.

29. Carrier-specific costs that are not directly related to the provision of number portability include, for example, the costs of upgrading SS7 capabilities or adding intelligent network (IN) or advanced intelligent network (AIN) capabilities. These costs are associated with the provision of a wide variety of services unrelated to the provision of number portability, such as CLASS features. Provision of these services will facilitate the ability of incumbent carriers to compete with the offerings of new entrants.

30. Incumbent LECs, as well as new entrants, will be required to incur these costs to support the provision of number portability and other services. While some incumbent LECs may have to upgrade existing networks and infrastructure, new entrants will need to design their networks from the outset to include these capabilities. Many incumbent LECs, though, may already have the necessary network capabilities to support the provision of long-term number portability, thus minimizing the need to incur upgrade costs. By limiting the deployment of long-term portability to those geographic areas where carriers are already offering, or are likely to offer, competing telephone exchange and exchange access services, we limit these expenditures and their recovery to areas where the incumbent carriers would, solely for competitive reasons, likely upgrade their networks. We note that this approach is also consistent with that taken in implementing 800 number portability, where LECs recovered the core costs of deploying SS7 capabilities as network upgrades from all end users.

31. We seek comment on whether we should specify a particular recovery mechanism for carrier-specific costs not directly related to number portability, and on alternative methods of recovering such costs from consumers or other carriers. In addition, we believe that due to the inevitable implementation of switch and other network upgrades to support long-term number portability and other AIN capabilities, networks will operate with greater efficiencies, resulting in increased productivity. We seek comment on whether such future network design modifications should be considered in determining the extent to which carriers may recover carrier-specific, non-number portability-specific costs, and if so, how they should be considered.

d. Price Cap Treatment

32. If this Commission were to specify a particular method of cost recovery from end users, such requirement would include companies that are subject to price cap treatment. Price cap regulation may affect carriers' ability to recover their costs under the methods described above, or other possible methods, because it restricts the flexibility with which price cap carriers may price various services. We tentatively conclude that price cap carriers should be permitted to treat as an exogenous cost any carrier-specific, number portability-specific costs they incur, but that such carriers should not be permitted to treat as an exogenous cost any carrier-specific, non-number portability-specific costs. These conclusions are consistent with our 800 Access proceeding where costs specific to 800 access were accorded exogenous cost treatment, while core SS7 costs were treated as general network upgrades. We, therefore, seek comment specifically on how price cap companies should be permitted to recover costs for facilities shared by all carriers; carrier-specific, number portability-specific costs; and carrier-specific, non-number portability-specific costs. In particular, we seek comment on whether price cap companies should be permitted to treat exogenously any of the above number portability-specific cost categories. We also seek comment on whether these costs, alternatively, should be placed in a new price cap basket or an existing basket. If parties recommend that such costs are to be placed in an existing basket, we ask parties to identify which basket would be most appropriate.

II. Procedural Matters

A. Ex Parte

33. This is a non-restricted notice and comment rulemaking. *Ex parte* presentations are permitted, except during the Sunshine period, provided they are disclosed as provided in the Commission's rules.

B. Regulatory Flexibility Act

34. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 601

et seq. (1981), the Commission prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities resulting from the policies and proposals set forth in this FNPRM. The IRFA appears at Appendix C of the FNPRM. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the remainder of the FNPRM, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the FNPRM, including the IRFA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act.

35. *Reason for Action:* The Commission, in compliance with sections 251(b)(2) and 251(d)(1) of the Act, proposes rules and procedures intended to ensure the prompt implementation of telephone number portability with the minimum regulatory and administrative burden on telecommunications carriers. The rules proposed in the FNPRM are necessary to implement section 251(e)(2) of the Act, which requires that the costs of number portability be borne by all telecommunications carriers on a competitively neutral basis.

36. *Objectives and Legal Basis for Proposed Rules:* The Commission's objective in issuing the FNPRM is to propose and seek comment on rules establishing a cost recovery mechanism for carriers to use in implementing a long-term number portability method pursuant to the Act and in accordance with our Report and Order in this proceeding. Specifically, our goal is to propose rules which implement section 251(e)(2) of the Act, requiring that the cost of ''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). The legal basis for action as proposed in the FNPRM is contained in sections 1, 4(i), 4(j), 201–205, 218, 251(b), 251(e), and 332 of the Communications Act of 1934, as amended. 47 U.S.C. 151, 154(i), 154(j), 201–205, 218, 251(b), 251(d), 251(e), 332.

37. *Description and Estimated Number of Small Entities Affected:* The rules governing long-term number portability apply to all LECs, including incumbent LECs as well as new LEC entrants, and also apply to cellular, broadband PCS, and covered SMR providers. According to the SBA definition, incumbent LECs do not qualify as small businesses because they are dominant in their field of operation. Accordingly, we will not address the impact of these rules on incumbent LECs.

38. However, our rules may have a significant economic impact on a substantial number of small businesses insofar as they apply to telecommunications carriers other than incumbent LECs. The rules may have such an impact upon new entrant 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, we estimate that 2,100 carriers could be affected. We have derived this estimate based on the following analysis:

39. 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 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. For example, a PCS provider which is affiliated with a long distance company with more than 1,000 employees would be disqualified from being considered 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 Order would be approximately 2,100. We request comment on this estimate. These entities could include various categories of carriers, including competitive access providers, cellular carriers, interexchange carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. The SIC codes which describe these groups are 4812 and 4813.

40. *Reporting, Recordkeeping and Other Compliance Requirements:* The FNPRM requests comment on the appropriate method by which the costs of long-term number portability should be recovered. One possible cost recovery method would be based upon a percentage of a carrier's gross revenues. Such a rule, if promulgated, would not impose a reporting requirement on LECs because they already file information about gross revenues with the Commission for other purposes. There are no other reporting requirements contemplated by the FNPRM.

41. *Federal Rules Which Overlap, Duplicate or Conflict with these Rules:* None.

C. Notice and Comment Provision

42. Pursuant to applicable procedures set forth in sections §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on this FNPRM on or before August 16, 1996, and reply comments on or before September 16, 1996. To file formally in this proceeding, parties must file an original and twelve copies of all comments, reply comments, and supporting comments. Parties wanting each Commissioner to receive a personal copy of their comments must file an original plus sixteen copies. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554. In addition, parties should file two copies of any such pleadings with the Competitive Pricing Division, Common Carrier Bureau, Room 518, 1919 M Street, NW., Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 2100 M Street, NW., Suite 140, Washington, DC 20037 (202/857–3800). Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC 20554.

43. In order to facilitate review of comments and reply comments, both by parties and by Commission staff, we require that comments be no longer than forty (40) pages and reply comments be no longer than twenty five (25) pages.

Empirical economic studies, copies of relevant state orders, and proposed rule text will not be counted against these page limits. Specific rule proposals should be filed as an appendix to a party's comments or reply comments. Such appendices may include only proposed text for rules that would implement proposals set forth in the parties' comments and reply comments in this proceeding, and may not include any comments or arguments. Proposed rules should be provided in the format used for rules in the Code of Federal Regulations and should otherwise conform to the Comment Filing Procedures set forth in this order. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments also must clearly identify the specific portion of this FNPRM to which a particular comment or set of comments is responsive. Parties will not be permitted to file more than a total of ten (10) pages of ex parte submissions, excluding cover letters, except in response to direct requests from Commission staff. This would not include written *ex parte* filings made solely to disclose an oral *ex parte* contact. *Ex parte* filings in excess of this limit will not be considered as part of the record in this proceeding.

44. Parties also are asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements addressed above. Parties submitting diskettes should submit them to Wanda M. Harris, Competitive Pricing Division of the Common Carrier Bureau, 1919 M Street, NW., Room 518, Washington, DC., 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in ''read only'' mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

D. Ordering Clause

It is ordered that, pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 218, 251, and 332 of the Communications Act as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201–205, 218, 251, and 332, a further notice of proposed rulemaking is hereby adopted.

List of Subjects

47 CFR Part 20

Federal Communications Commission, Local number portability, Radio, Telecommunications.

47 CFR Part 52

Federal Communications Commission, Cost recovery, Local exchange carrier, Local number portability, Long-term database methods, Numbering, Telecommunications.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–18479 Filed 7–24–96; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Part 24

[WT Docket No. 96–148; GN Docket No. 96–113; FCC 96–287]

Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees; and Implementation of Section 257 of the Communications Act—Elimination of Market Entry Barriers

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In this *Notice of Proposed Rulemaking* in WT Docket No. 96–148 and GN Docket No. 96–113, the Commission proposes modifications to the broadband personal communications services (PCS) rules to expand geographic partitioning and spectrum disaggregation provisions. The Commission also solicits comment on certain issues relating to these rules. The Commission's objective in expanding the partitioning and disaggregation rules is to enable a wide variety of applicants, including small businesses, to overcome barriers to entry in the broadband PCS market, to increase competition, and to expedite the provision of broadband PCS to areas that may not otherwise receive wireless services.

DATES: Comments must be filed on or before August 15, 1996. Reply comments are to be filed on or before August 30, 1996.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Washington D.C. 20554.

FOR FURTHER INFORMATION CONTACT: David Nall or Mika Savir, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This *Notice of Proposed Rulemaking* in WT Docket No. 96–148 and GN Docket No. 96–113, adopted on June 28, 1996, and released on July 15, 1996, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 575, 2000 M Street N.W., Washington D.C. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington D.C. 20037, (202) 857–3800. Synopsis of *Notice of Proposed Rulemaking:*

I. Background

1. In the *Broadband PCS Memorandum Opinion and Order,* Amendment of the Commission's Rules to Establish New Personal Communications Services, GN Docket No. 90–314, *Memorandum Opinion and Order,* 59 FR 32830 (June 24, 1994) (*Broadband PCS Memorandum Opinion and Order*), the Commission declined to allow general geographic partitioning, noting that licensees might use partitioning as a means of circumventing construction requirements. The Commission observed, however, that a limited partitioning scheme might facilitate participation by certain groups, including rural telephone companies and other designated entities, in the provision of broadband PCS. The Commission stated that it would consider the issue of geographic partitioning in a future proceeding to establish competitive bidding rules for broadband PCS.

2. The Commission established geographic partitioning provisions for rural telephone companies in the *Competitive Bidding Fifth Report and Order*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, 59 FR 37566 (July 22, 1995) (*Competitive Bidding Fifth Report and Order*). The Commission determined that partitioning would satisfy the Congressional mandate to provide an opportunity for rural telephone companies to participate at auction and in the provision of broadband PCS. The Commission decided that rural telephone companies could acquire a partitioned license (1) by forming an auction bidding consortium comprised entirely of rural telephone companies, and partitioning the license(s) won among consortium members; or (2) through private negotiation, either before or after an auction. The Commission required that partitioned areas conform to established