

Decision 97-10-029 October 9, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's
Own Motion into Competition for Local Exchange
Service.

R.95-04-043
(Filed April 26, 1995)

Order Instituting Investigation on the
Commission's Own Motion into Competition for
Local Exchange Service.

I.95-04-044
(Filed April 26, 1995)

ORIGINAL

O P I N I O N

Introduction

By this decision, we resolve certain outstanding issues relating to the provision of interim number portability (INP). Specifically, we address the changes which are appropriate in our adopted procedures for the recovery of service-provider INP costs to conform to the rules adopted by the Federal Communications Commission (FCC). We also rule upon the pending Petition for Modification of Decision (D.) 96-04-052 (the Decision), filed by Pacific Bell (Pacific), in which the effects of the FCC rules on INP cost recovery are raised. We likewise address outstanding issues concerning the provision of INP using certain network functionalities associated with Direct Inward Dialing (DID).

I. Cost Recovery of INP on a Competitively Neutral Basis

A. Background

In D.96-04-052, the Commission adopted wholesale rates for Pacific's Directory Number Call Forwarding (DNCF) service and GTE California Incorporated's (GTEC) Service Provider Number Portability service (SPNP). DNCF is Pacific's designation and SPNP is GTEC's designation for an INP wholesale service to competitive local carriers (CLCs) based on the end-office-switch functionality that is also used to provide end-user Remote Call Forwarding (RCF) service. Pacific's and

GTEC's current tariffs place the entire charge for INP directly on those CLCs whose customers port their telephone numbers.

Subsequent to April 10, 1996, the date of the issuance of this Decision, the FCC adopted rules on INP,¹ specifically addressing guidelines that the states must follow in mandating cost recovery mechanisms for currently available number-portability methods in conformance with the 1996 Telecommunications Act (Act).

Specifically, Section 252(e) of the Act states that:

The cost of establishing...number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the [FCC].

The FCC in its Order concluded that Section 251(e)(2) of the 1996 Act mandates a departure from general cost-causation principles, whereby the purchaser of a service must pay for the cost of providing the service. Portability Order, at ¶ 131. The FCC expressly ruled that:

With respect to number portability, Congress has directed that we depart from cost causation principles if necessary in order to adopt a "competitive neutral" standard, because number portability is a network function that is required for a carrier to compete with the carrier that is already serving a customer. Depending on the technology used, to price number portability on a cost causative basis could defeat the purpose for which it was mandated. (Portability Order, at ¶ 131.)

Moreover, the FCC ruled that any cost-recovery mechanism that requires new entrants to bear all of the costs of portability does not comply with Section 252(e) of the 1996 Act. Portability Order, at ¶ 138 ("imposing the full incremental cost of number portability solely on new entrants would contravene the statutory mandate that all carriers share the cost of number portability").

¹ In the Matter of Telephone Number Portability, CC Docket No. 95-116, First Report and Order And Further Notice Of Proposed Rulemaking, released July 2, 1996. (Portability Order.)

The FCC provided that a competitively neutral cost recovery mechanism must meet two criteria: first, it "should not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber"; and second, it "should not have a disparate effect on the ability of competing service providers to earn normal returns on their investment."

The FCC concluded that a variety of approaches essentially comply with their "competitively neutral" criteria and set out four methods which states could adopt.

1. The formula used by NYNEX and Rochester Telephone that establishes an annual charge assessed by the incumbent local exchange carrier (LEC) to the new entrants, based on each new carrier's number of ported numbers relative to the total number of working telephone numbers in the local service area.
2. A cost recovery mechanism based on the ratio of a carrier's number of active telephone lines (or numbers or customers) to the total number of active telephone lines (or numbers or customers) in a service area.
3. A cost recovery mechanism based on telecommunications carriers' gross revenues net of charges paid to other carriers.
4. A cost recovery mechanism that requires each carrier to pay for its own costs of ILNP

In the Portability Order, the FCC also declared that:

The costs of currently available number portability are the *incremental costs* incurred by a LEC to transfer numbers initially and subsequently forward calls to new service providers using existing RCF, DID, or other comparable measures. *Id.* ¶ 129 (emphasis added).

Incremental cost is therefore the benchmark mandated by the FCC for measuring portability costs.

On August 28, 1996, Pacific filed a Petition to Modify Decision 96-04-052 (the Decision). Pacific claims the Decision must be modified to conform to INP cost

recovery rules subsequently adopted by the FCC. Since the INP rates ordered in the Decision are based on the direct embedded costs (DEC) less avoided retail costs and are charged only to the CLCs requiring INP, Pacific believes that this recovery method does not conform to any of the FCC's approved competitively neutral cost-recovery mechanisms.

By Administrative Law Judge (ALJ) ruling dated September 30, 1996, comments were solicited from parties regarding what changes should be made in D.96-04-052 to conform to the FCC Portability Order. By ruling dated September 13, 1996, parties were directed to consolidate these comments with their responses to Pacific's Petition to Modify D.96-04-052.

Consolidated comments were filed on October 8, 1996, and reply comments were filed on October 18, 1996, in response to the ALJ ruling. Parties filing comments on INP issues included the following:

- Pacific
- GTEC
- California Telecommunications Coalition (Coalition)
- Office of Ratepayer Advocates (ORA)
- Sprint Communications (Sprint)
- MFS Intelenet of California (MFS)
- Telecommunications Resellers Association (TRA)

B. Positions of Parties

Pacific recommends the recovery of INP costs be based upon an allocation of costs in proportion to each carrier's total gross revenues less charges paid to and received by other carriers, to be consistent with the FCC's competitively neutral criteria. Pacific believes the amount to be recovered should be the incremental costs it reported in the Open Access and Network Architecture Development (OANAD) proceeding. Once the incremental costs associated with DNCF have been allocated to all telecommunications providers, Pacific proposes that they be recovered through an end-user surcharge.

Pacific recommends that D.96-04-052 be modified to remove the specific rates adopted for its DNCF service and substitute a recovery procedure based on its proposed gross-revenue-allocation methodology with an end-user surcharge for cost recovery.

GTEC doubts that Pacific's proposal in its Petition to Modify D.96-04-052 would result in a competitively neutral method of cost recovery. Pacific suggests that "INP costs be allocated in proportion to each carrier's total gross revenues less charges paid to and received by other carriers," to be collected through an end-user surcharge. (Petition, pp. 2-3.) GTEC argues that spreading INP cost across CLCs and LECs on such a basis and imposing an end-user surcharge for recovery of these amounts will result in a disproportionate surcharge to customers of different carriers. Each carrier's customer base size is different and not necessarily proportionate with the gross revenue. Pacific's proposal will cause different end-user surcharges for each carrier, advantaging some carriers with a lower per customer surcharge and disadvantaging those with a higher per customer surcharge. GTEC contends this disparity frustrates the obligation to create a competitively neutral mechanism.

GTEC argues that no further consideration on INP pricing and cost recovery is necessary. GTEC believes that the Commission has already complied with the FCC's Portability Order by requiring in D.96-04-052 that GTEC and Pacific file tariffs reflecting the available INP methods and rates. GTEC believes that allowing the carriers to charge each other reciprocally their tariffed rates for INP will permit each carrier to recover a portion of its respective costs and will maintain competitive neutrality.

If the Commission is persuaded that existing INP tariffs are not appropriate, GTEC supports the recovery of INP cost through a pooling and surcharge methodology, arguing that this approach will assure true neutrality. GTEC proposed such a method to the FCC in its Petition for Clarification and Reconsideration, CC Docket No. 96-116, filed August 26, 1996 (pp. 12-16).

The pooling mechanism proposed by GTEC to the FCC includes the following characteristics. First, all carriers would submit estimates of the cost of

providing INP. This industry cost would be used to determine the level of funding required for a pool which would be funded from two sources. The first source would be a uniform, mandatory charge on all local service customers. To be "competitively neutral," this charge would be: (1) explicitly identified as a separate line item for number portability on customer bills; (2) uniform across all local service customers; and (3) mandatory. The second source would be a per-call charge collected by interexchange carriers (IXCs) from customers of interexchange toll service. IXCs would be free to recover these charges from their customers as they deem appropriate.

GTEC believes this cost pooling mechanism satisfies the two cost recovery principles identified in the FCC Order 96-286. Because the end-user charge is identical for all customers, GTEC argues, cost pooling does not give one carrier an advantage over another. In addition, because costs are recovered from end-users, not through inter-carrier payments, GTEC states that the cost pool would not disparately impact the ability of any carrier to earn a normal return.

If the Commission finds significant concerns raised by parties' proposed INP cost recovery methods, GTEC suggests that resolution of the appropriate cost recovery methodology be the subject of workshops to identify all alternatives, examine more closely the mechanics of the various proposals, and possibly narrow the number of alternatives to be considered.

The Coalition agrees that the Decision should be modified in order to conform to the FCC's "competitively neutral" criteria, but disagrees with Pacific concerning the proper alternative approach for INP cost recovery. The FCC determined that a cost recovery mechanism based on revenues should "assess a uniform percentage assessment on a carrier's gross revenue less charges paid to other carriers."

The Coalition claims that Pacific deviates significantly from the FCC Number Portability Order in that it proposes an allocation in proportion to each carrier's total gross revenues paid to and received by other carriers. The Coalition argues this proposal contravenes the intent of the FCC Number Portability Order which nowhere suggests that any revenue adjustment should be made to reflect payments "received by" other carriers. Were Pacific to prevail in its proposed recovery method,

the effect would be to ignore the sizable access revenues Pacific enjoys by virtue of its bottleneck monopoly status. The Coalition, therefore opposes, Pacific's proposal as an attempt on Pacific's part to significantly slash its rightful share of INP costs.

The Coalition supports adoption of the principle that each carrier pays for its own costs of INP. The Coalition argues that this recovery method has distinct advantages over alternative methods. Under this method, there is no need for any determination of the cost of providing INP. In addition, this method eliminates the administrative burden of allocating costs among many providers. Thus, there is no requirement for administrative or regulatory oversight to collect or distribute revenues. Moreover, when each carrier is responsible for its own costs, the Coalition claims that the carriers have an incentive to minimize those costs by provisioning INP in the most efficient manner.

Pacific opposes adoption of the fourth option presented in the FCC Report and Order which would require each carrier to pay for its own INP costs, arguing that this option would not reduce Pacific's administrative burden and nor alleviate the need to recover its costs, but would only relieve the administrative burden for CLCs.

Pacific discounts the claimed advantage that, under the fourth option, there is no need for any determination of the cost of providing INP. Pacific claims that, under the Local Competition rules, while CLCs are not required to file costs, Pacific still does, and has already filed the costs for its INP service offering in the OANAD proceeding.

Since Pacific's ordering, billing, and other operational support systems have already been designed to process INP requests from CLCs, Pacific claims it has incurred significant costs. Currently, under the FCC order, Pacific is not authorized to charge for its INP service, and thus, Pacific claims it cannot yet recover INP costs. Since the majority of numbers to be ported will be from Pacific to others, Pacific argues that it will incur costs and administrative burdens above and beyond those incurred by CLCs.

Pacific denies that having carriers absorb their own costs would provide an incentive to minimize costs by provisioning INP in a more efficient manner, since Pacific has already expended the resources necessary to implement DNCF.

As an alternative to the recommendation that carriers bear their own INP costs, some Coalition members recommend an apportionment of INP costs based on each carrier's share of assigned active telephone numbers. Other commenters (e.g., Airtouch, Sprint, and TRA) likewise favor an apportionment based on telephone numbers. TRA notes that using an allocator based on revenues would assign cost responsibility without regard to the carrier's local service activity. Among Coalition members, AT&T Communications of California, Inc. (AT&T), ICG Telecom Group, Inc. (ICG), MCI Telecommunications Corporation (MCI), and The Utility Reform Network (TURN) agree with TRA that it is not reasonable to assign responsibility for recovery of number portability costs to carriers on a basis that does not bear some reasonable relationship to the level of activity in the local marketplace.

Airtouch recognized that the FCC has not obligated wireless carriers to provide number portability or receive ported numbers through interim methods. AT&T, ICG, MCI, and TURN agree with Airtouch that only carriers actually participating in INP and carriers deriving benefits from INP should bear the costs thereof.

Sprint recommends that the Commission adopt a proportionate assessment of INP costs on all local exchange carriers based on active telephone numbers, with the caveat that this assessment be applied to local exchange carriers operating within the geographic areas where number porting occurs. Such a method would require this Commission to calculate its assessment based upon an incremental cost measure, as opposed to the DEC measure contained in D.96-04-052. AT&T, ICG, MCI, and TURN also agree with Sprint that the apportionment should be based on active telephone numbers, with the assessment applied to local exchange carriers operating within the geographic area where number porting occurs.

Pacific argues that basing INP cost recovery on the number of active numbers is problematic because there is no correlation between the number of customers leaving a company and the actual revenue lost when those customers leave.

Pacific argues that, if the Commission chooses to allocate INP costs based on a carrier's total number of active telephone numbers, it should be based on the number of numbers ported out per carrier and the number of numbers ported in per carrier. For example, if Pacific loses 10 customers to another carrier, Pacific believes each carrier should share in the costs of providing INP to these 10 customers. Unlike the allocation of INP costs based on active numbers Pacific believes that basing the allocation of costs on ported numbers has much more relevance to cost causation and is, therefore, competitively neutral.

MFS believes that all telecommunications carriers within California should contribute to a portability fund in direct proportion to their total net revenues from intrastate telecommunications operations, with an offset for payments to other carriers for intermediate telecommunications services employed in the delivery of retail services.

The Coalition agrees with Pacific, MFS, Sprint, and GST that the appropriate costs to be recovered are incremental costs associated with INP. The Coalition also agrees with MFS that Total Element Long-Run Incremental Cost (TELRIC) is the appropriate basis to determine incremental costs. In the absence of suitable TELRIC data, the Coalition agrees with Sprint that the Commission may be able to extract existing LRIC estimations for INP from the OANAD proceeding, rather than continue the existing DEC-based INP rates which were adopted in D.96-04-052.

ORA believes the cost-based rates which the Commission adopted for recovering INP expenses meet only the second of the FCC's two criteria (i.e., preserving carriers' ability to earn a normal rate of return). ORA does not believe, however, that cost-based rates meet the FCC's first criteria requiring competitive neutrality. Consequently, ORA recommends that the Commission modify the INP rates adopted in D.96-04-052 to eliminate the cost-recovery component.

ORA also believes that the Commission must reopen the record of D.96-04-052 to reexamine and adopt an alternative method for recovery of INP costs. ORA does not oppose use of gross telecommunications revenues, nor object to the idea of deducting charges paid to other carriers. However, ORA does reject Pacific's suggestion that charges "received by other carriers" also be deducted from the gross revenues. ORA contends that Pacific would be unfairly advantaged by such a proposed allocator because Pacific alone would be able to deduct INP charges received from other carriers as virtually the sole INP provider. Pacific could thus reduce its gross telecommunications revenues in a manner that no other carrier could duplicate.

C. Discussion

We agree with the majority of parties that a modification in D.96-04-052 is necessary to conform to the FCC Number Portability Order. Pacific's proposal to deduct revenues received from other carriers in computing the applicable revenue base for allocating INP costs, however, fails to produce a competitively neutral result. Since the incumbent LECs provide the overwhelming majority of INP services, any deduction of revenues received would unfairly result in a disproportionate loading of the INP cost burden on CLCs, which would have little or no corresponding deduction.

In addition, the level of revenues earned by a carrier may not necessarily correspond to the size or level of activity of that carrier. The use of revenues as an allocation base would therefore tend to impose a cost burden on carriers which likely is disproportionate to their size or level of activity in the local exchange market, and would not yield a competitively neutral sharing of the cost burden.

We also reject the proposal of the Coalition to simply require each carrier to bear its costs for providing INP to other carriers. Because the vast majority of telephone numbers will be ported from the incumbent LECs to the CLCs, it would create a disproportionate burden on the incumbent LECs to require them to absorb all INP-related costs, while CLCs received INP service essentially free of charge. Such an outcome would also not be competitively neutral.

We find the most acceptable method for allocating INP costs among carriers to be the use of active end-user-assigned telephone numbers in a given service area. Each carrier would share in the costs of INP based on the ratio of the carrier's active end-user telephone numbers to the total number of active telephone numbers in the service area. We believe that this method best meets the FCC's test of competitive neutrality since the INP cost burden would not be borne solely by carriers in relation to the specific numbers which they ported. Instead, the costs would be spread among all facilities-based LECs and CLCs that utilize the network. Moreover, our adopted cost-recovery method provides a reasonable sharing of total costs which would not disproportionately burden any single carrier, since each carrier would pay for INP costs in proportion to the telephone numbers it serves.

Another modification must be made in the decision with respect to the measurement methodology used to determine the cost of INP. In D.96-04-052, we used DEC as the basis for setting INP rates. At the time we issued D.96-04-052, we noted that INP cost studies based on Total Service Long-Run Incremental Cost (TSLRIC) had not yet been completed. Thus, while we concluded that TSLRIC produces a more economically efficient basis for pricing in comparison to DEC, we used DEC as an interim pricing proxy since there were no completed TSLRIC studies for INP at the time. However, the FCC Portability Order requires that the costs of INP to be recovered are the incremental costs. Moreover, since the issuance of D.96-04-052, we subsequently issued D.96-08-021 in the OANAD proceeding (R.93-04-003) in which we approved TSLRIC studies for the INP services offered by Pacific and GTEC. For Pacific, we specifically approved TSLRIC study for Pacific's DNCF service. We also approved a TSLRIC for DID-based INP subject to further refinement pending the outcome of workshops held pursuant to D.96-04-052 to address more comprehensive means of providing DID-INP. We also approved TSLRIC for GTEC's SPNP service. We deferred ruling, however, on GTEC's proposal to use DID as a proxy for DID-based INP.

Therefore, we conclude that it is now appropriate that the INP rates adopted in D.96-04-052 be modified to reflect TSLRIC rather than DEC as a basis for INP cost recovery. The INP TSLRIC studies which have been submitted and approved

in the OANAD proceeding should be used as a basis to revise INP rates on an interim basis. The use of TSLRIC for establishing a cost recovery standard will conform to the requirement for the use of incremental costs in the FCC Portability Order. Nevertheless, we must still determine how the TSLRIC studies can be used to develop a competitively neutral INP cost recovery mechanism.

The TSLRIC amounts filed by the LECs do not include recovery of shared and common costs since they have not yet been determined in the OANAD proceeding. We recognize, however, that wholesale prices should provide compensation for shared and common costs. Accordingly, for interim purposes, we intend to apply percentage allowances for shared and common costs in determining the costs of INP subject to recovery on an industrywide basis. We shall solicit comments from parties concerning an appropriate interim allowance for shared and common costs. We will provide for a subsequent adjustment for the recovery of shared and common costs as part of the overall true-up of the INP memorandum accounts for any differences between the interim allowances for these costs compared with those approved in OANAD. The use of an interim allowance for shared and common costs will avoid any undue distortion in the interim INP rate and will minimize the amount of any true-up adjustment. Likewise, in the OANAD proceeding, we are also considering a variant measure of incremental costs, known as TELRIC. For interim purposes, however, the adopted TSLRIC studies provide a reasonable approximation of incremental costs. The final true up of the INP memorandum account will reflect any necessary adjustments to recognize the final costs for INP to be adopted in OANAD.

In order to quantify a cost recovery factor for INP services based on all active telephone numbers, as determined in this decision, we must develop a reallocation of TSLRIC to reflect the TSLRIC per telephone number. The TSLRIC adopted in D.96-08-021 assumed that only those carriers actually porting a number would pay the full cost of the INP service. Under the revised allocation of costs adopted herein, we intend to allocate the INP TSLRIC among all facilities-based CLCs, as well as Pacific and GTEC, based on total active end-user telephone numbers assigned to their end-use customers.

We must, therefore, develop measures of (1) the total quantity of end user telephone numbers in service for a defined period of time for each facilities-based carrier, (2) the total quantity of ported numbers, and (3) the total pool of costs on a TSLRIC basis for all INP activity performed based on the total quantity of ported numbers for the defined period of time which are subject to allocation.

Since the specific quantity of active numbers continually changes, we shall base the measurement on end user telephone numbers in service for a prescribed period of time. We believe that an annualized estimate of active end-user telephone numbers for the 12 months beginning October 1, 1997 should be used, based on estimates provided to the Commission by each carrier with active telephone numbers. In the case of a CLC that provides unbundled switching service, we would require the CLC to report those telephone numbers which reside within its switch as its own telephone numbers. Since CLC resellers do not have any facilities of their own nor any assigned telephone numbers, CLCs offering only resale service should not be included among the CLCs providing reports of active telephone numbers. We recognize that some CLCs offer service in part using their own facilities and in part by reselling the incumbent LEC's services. In the case of those CLCs, they should report the number of active lines which are served using the CLC's own facilities, but they should exclude those lines which are served through resale of the LEC's service.

Likewise, the incumbent LECs should exclude resold lines in reporting the quantity of active telephone numbers. In this manner, resold lines shall be excluded from our calculation of total phone numbers subject to the INP surcharge since no resold lines use ported numbers. Likewise, since wireless carriers are not obligated to provide INP services, we shall exclude wireless carriers in determining the count of active telephone numbers. After all of the active telephone numbers and ported numbers are reported to us by carriers, we will aggregate the individual estimates to determine the total number of active telephone numbers over which recoverable INP costs would be allocated.

We also need to develop an annualized estimate of a total pool of costs for INP activities subject to allocation among carriers. The TSLRIC studies approved for

INP in OANAD included separate factors for one-time nonrecurring charges, fixed monthly recurring charges, and usage-based charges. Since we intend to allocate INP costs among all customers of all carriers irrespective of whether a particular customer has a ported number or not, and irrespective of the specific minutes of usage applicable to a ported number, we must develop estimates of the total quantity of numbers to be ported and the total minutes of usage applicable to ported numbers.

From the data compiled on total ported numbers and average usage per ported number, we shall derive the total INP costs subject to recovery through an end-user surcharge among end-users of all facilities-based CLCs as well as Pacific and GTEC. We would develop the applicable end-user-surcharge amount by dividing the total estimated pool of recoverable INP costs for all ported numbers by the total quantity of active end-user telephone numbers. The resulting unit cost amount as determined by the Commission would represent the end-user surcharge which the carrier could bill to its retail customers. Carriers shall have the option of billing their end-use customers for the INP surcharge or absorbing the cost. Once final incremental costs and shared-and-common cost elements are determined in the OANAD proceeding, we shall authorize a true-up of the applicable INP costs. In a subsequent order, we shall address the procedures for implementing the INP true-up, including the handling of any retrospective adjustments dating back to the inception of the INP memorandum accounts as well as prospective adjustments for ongoing INP costs. In the subsequent order, we shall also address any necessary procedures to modifications to the LECs' filed tariffs to reflect the new cost recovery method adopted herein.

Before ordering carriers to provide the required data outlined above, we shall first provide all parties an opportunity for comment on the most efficient and least controversial manner in which to develop the requisite measures of active numbers, ported numbers, and average usage per ported number. These measures are needed to derive an applicable INP cost recovery surcharge allowance on a per-telephone number basis. We shall also solicit comments concerning how the data inputs to the surcharge should be updated in the following year, and subsequently thereafter.

The recovery procedures we adopt herein shall apply only to INP and are specifically responsive to the requirements of the FCC Portability Order. These recovery procedures are not precedential with respect to the recovery of other categories of cost such as permanent LNP or other local competition implementation costs.

II. Use of Direct Inward Dialing Network Functionalities for the Provision of INP

A. Positions of Parties

In D.96-04-052, we also considered proposals for the use of DID functionality as an alternative means of providing INP in addition to RCF functionality. Both Pacific and GTEC offer DID as a retail service feature that permits incoming calls to stations served by a PBX or by Centrex to be dialed directly without the need to go through an attendant. As part of the retail DID service, the LECs utilize separate dedicated trunks for routing calls.

In Phase II of the proceeding, MCI argued that the LECs should be required to provide INP through the use of the "route indexing" network functionality currently deployed in LEC switches to provide retail DID service. Route indexing software is used to direct incoming calls made to a particular DID number, and to the proper trunk group, in order to send the incoming calls to the proper customer location. The Coalition argues that the existing route indexing software can also be used to provide INP by using a similar routing and termination process for ported numbers, but without the need for (and cost of) separate dedicated trunks as called for in the retail DID tariff.

The Coalition believes that the requirement for separate dedicated trunks is merely driven by the retail DID tariff provisions, and not by the underlying technology. The Coalition argues that existing interconnection trunks can be used to provide DID-INP functionality without any additional cost for separate dedicated trunks as required under the retail DID tariffs. To distinguish the specialized use of DID

route indexing functionality from the retail DID tariff, MCI characterizes the proposed DID-INP service as "flex-DID."

In D.96-04-052, we did not reach a final conclusion regarding the feasibility of implementing "flex-DID" for INP without the use of separate dedicated trunks. We directed that a technical workshop be held to determine the feasibility and efficiency of using existing interconnection trunks for provisioning "flex-DID." A workshop was held on May 15, 1996, and a list of outstanding technical issues related to DID-INP was developed. Comments regarding the results of the May 15 workshop were filed on June 10, 1996. By ALJ ruling dated June 11, 1996, a second workshop was scheduled for July 1, 1996 to address remaining outstanding technical issues relating to the use of existing DID network functionality to provide DID-INP service.

At the July 1, 1996, workshop, MCI made a direct presentation regarding how DID route indexing functions, and the means by which route indexing could purportedly be used to provide INP without the need for dedicated DID trunks.

Theoretically, Pacific agrees that DID routing could be physically arranged in conjunction with local interconnection trunks established between exchange carriers. Pacific claims, however, that this arrangement would not be technically feasible because it would not be able to provide, bill, or maintain the proposed service. Pacific argues that, since any use of DID routing requires manual translations in the switch, only a limited number of orders can be processed at a time. The use of a manual resource also generates higher nonrecurring costs as compared to electronic processes such as those used to install RCF. Pacific further argues that it is not feasible to separately measure the ported calls passed over the interconnection trunks, making accurate billing a problem, and that the route indexing function will lead to more rapid NXX code exhaustion.

GTEC agrees with Pacific that there is a capability resident within LEC switches which theoretically could permit INP utilizing the route indexing and translation functions. As a practical matter, however, GTEC argues that there are a number of limitations which make route indexing unsuitable for INP purposes. In addition to the problems raised by Pacific, GTEC notes additional constraints.

For instance, the combined route-index and translation functions within a central office would be used to port an original dialed number by prefixing that number in the LEC office with a pseudo "NPA" code and sending the call back to the tandem. The tandem would determine from the pseudo code that the call should be routed to the CLC office rather than simply terminated.

GTEC argues that the availability of pseudo codes is limited and likely will not be able to support the number of competitive carriers existing in California. Such an arrangement would also limit CLCs to one trunk group per tandem office which could accept calls to ported numbers.

The Coalition argues that the Commission should immediately order Pacific and GTEC to make the DID INP option and other technically feasible non-RCF INP options available to CLCs in order to be in conformance with the FCC Number Portability Order. The FCC's Number Portability Order states that LECs must offer INP "through RCF, DID and other comparable methods." The Coalition states that Pacific and GTEC have refused to offer INP utilizing DID route indexing functionalities or comparable methods. DID INP is appropriate for customers with many access lines, whereas DNCF and SPNP are not. In addition, the Coalition claims there are no technical problems with implementing DID INP at this time.

Pacific opposes the Coalition's request that the Commission immediately order Pacific to provide DID INP and other technically feasible non-RCF INP options. Pacific claims that Section 271(c) of the Act does not mandate that INP be provided using multiple methodologies, but instead uses the word "or" to indicate that RCF, DID trunks, or other methods are among the acceptable alternatives. Thus, Pacific argues that the law does not require it to offer additional INP services. Pacific also argues that its shareholders would have to subsidize the development of additional INP products which would benefit only CLCs.

B. Discussion

At the conclusion of the July 1, 1996, workshop, parties still remained in dispute over the practical feasibility of developing and offering the "flex-DID"

version of INP. MCI and other Coalition members believe it is feasible and desirable to require the LECs to develop an INP service utilizing route indexing and other DID network functionalities without separate dedicated DID trunks. Pacific and GTEC continued to raise questions about the technical feasibility and costs of implementing INP provisioning using DID functionalities in the manner proposed by MCI.

Subsequent to the conclusion of the July 1, 1996, the workshop, both Pacific and GTEC executed certain interconnection agreements, such as ones with MCI, in which they each were ordered to offer certain enhanced forms of INP.² Pacific's interconnection agreement with MCI specifically provides for a service called "Flex DID." In light of the progress which has been made in the technical capabilities of the LECs to offer alternative forms of INP, through interconnection agreements, we conclude that these alternative forms should be made available to all CLCs. We shall direct Pacific and GTEC to file comments reporting on the current availability of alternative forms of INP which they have been ordered to provide under interconnection agreements. We shall also require them to file the proposed INP tariffs offering these alternatives to all carriers. Following receipt of these filings, we shall consider further steps to implement tariffs for these INP alternatives.

III. LECs Sharing of Terminating Access Charges for Calls to Ported Numbers

Positions of Parties

Paragraph 140 of the FCC's Portability Order directs "forwarding and terminating carriers to assess on IXCs charges for terminating access through meet-point billing arrangements."

The Coalition in its comments argues that the Commission must order Pacific and GTEC to share access revenues on calls made to ported numbers and must establish the appropriate method to share these revenues, in accordance with the FCC

² D.97-01-039 approved the Pacific/MCI agreement. D.97-01-045 approved the GTEC/MCI agreement.

Number Portability Order, to prevent Pacific and GTEC from realizing windfall revenues for access services provided by CLCs.

In order to comply with the Number Portability Order, Pacific argues that it would need to modify its tariff to state that IXC-forwarded calls would be meet-point billed for terminating access charges. Pacific states that its proposal for meet-point billing of DNCF calls was contained in its proposed agreements in its arbitration proceedings.

Discussion

We agree that an appropriate methodology for the sharing of access revenues associated with ported numbers needs to be established to provide for a fair distribution of the revenues among carriers in a competitively neutral fashion. This issue was previously raised by the Coalition at the April 17, 1996, prehearing conference on Phase III issues. MCI Communications, on behalf of the Coalition, argued that this issue had not been adequately addressed by the Commission in D.96-04-052 in dealing with INP issues, and that it was a critical issue for both local and interexchange carriers because of the millions of dollars of terminating switched access revenues at stake. While individual carriers have worked out sharing arrangements through arbitrated interconnection agreements, we acknowledge the Coalition's concern for a generic rule applicable to all carriers, and shall provide an opportunity for parties to comment on this issue accordingly. In order to develop a methodology for the sharing of terminating switched access revenues associated with ported numbers, we shall direct all parties to file comments on their proposals for an appropriate competitively neutral sharing methodology in conformance with the Act and the FCC Portability Order.

Findings of Fact

1. In D.96-04-052, the Commission adopted a cost recovery procedure of INP based on cost-causation principles which required each CLC porting a number to compensate the LEC for the costs of the INP service.

2. The FCC subsequently adopted the First Report and Order in the matter of telephone number portability on July 2, 1996, concluding that the Act mandates a

departure from cost-causation principles in order to adopt a competitively neutral standard.

3. Under the criteria for competitive neutrality set by the FCC, a cost-recovery mechanism should not give one competitor an appreciable cost advantage in competing for a subscriber and should not have a disparate effect on competing provider's ability to earn normal investment returns.

4. An INP cost-recovery allocation based on each carrier's gross revenues less charges paid to and received by other carriers would result in a disproportionate share of INP costs being allocated to CLCs.

5. An INP cost recovery approach whereby each carrier bears its own costs to provide INP for others would create a disproportionate cost burden on incumbent LECs that will be porting the vast majority of telephone numbers.

6. An INP cost-recovery allocation that employs each facilities-based carrier's active telephone numbers (excluding wireless carriers) to allocate costs would not disproportionately burden any single carrier and would be consistent with the competitive-neutrality criterion of the FCC.

7. The FCC order further requires that the cost for INP is to be an incremental cost, not a direct embedded cost, as was used in determining INP costs in D.96-04-052.

8. INP cost studies based on TSLRIC have been approved in the OANAD proceeding in D.96-08-021.

9. The costs associated with the offering of INP include shared and common costs.

10. In order to quantify an INP cost-recovery factor based on the TSLRIC adopted in OANAD, it would be necessary to determine the applicable number of total active telephone numbers and the total amount of TSLRIC associated with porting telephone numbers.

11. D.96-04-052 did not reach a final conclusion regarding the feasibility of implementing the proposed "flex-DID" alternative to provide INP using route indexing functionalities without the use of a separate dedicated trunk, as is required under retail DID tariffs.

12. Two technical workshops were held and comments were submitted to address the technical and economic feasibility of developing and offering "flex-DID."

13. While it may be technically feasible for the LECs to provide INP using DID network functionalities without the use of a separate dedicated DID trunk, the workshop left unresolved technical and economic issues regarding the provisioning, costing, and maintenance of the proposed "flex-DID" service.

14. Subsequent to the "flex-DID" workshop, Pacific and GTEC entered into interconnection agreements with MCI offering additional alternative forms of INP.

15. Terminating switched access charges are recovered by the incumbent LECs in connection with the porting of numbers for CLCs.

16. The Commission has not previously addressed the means by which terminating switched-access revenues should be shared among telecommunications carriers.

Conclusions of Law

1. The decision should be modified to reflect a competitively neutral method of allocation of INP costs among all facilities-based LECs and CLCs based on the quantity of active end-user telephone numbers utilizing incremental costs plus an allowance for shared and common costs.

2. The costs of provisioning INP should be apportioned among all facilities-based LECs and CLCs within California based upon the quantity of active end-user telephone numbers which each carrier serves, exclusive of end-user numbers provided on a resale basis, subject to recovery through an end-user surcharge.

3. The cost basis for determining an INP end-user surcharge should be derived from TSLRIC studies approved in the OANAD proceeding instead of the DEC basis used in D.96-04-052 in order to conform to the FCC Portability Order.

4. Pricing allowances for shared and common costs should be authorized for Pacific and for GTEC in deriving INP cost recovery subject to later true up once pricing allowances are determined in the OANAD proceeding.

5. Parties should be provided an opportunity to comment regarding the means by which the TSLRIC INP studies previously approved in the OANAD proceeding should be restated used to derive an end-user surcharge per active telephone number.

6. Pacific and GTEC should report on the progress which has been made relating to the adaptation of DID network functionalities to provide an alternative form of INP since the conclusion of the July 1, 1996, workshop.

7. The LECs should provide INP to all carriers through the adaptation of DID network functionalities consistent with the enhanced forms of INP which they were ordered to offer in their previously executed interconnection agreements.

8. Parties should be provided with the opportunity to comment on how terminating switched-access revenues associated with ported telephone numbers should be shared among telecommunications carriers in a competitively neutral manner.

9. The recovery procedures adopted in this order are applicable only to INP costs and are not precedential with respect to other categories of cost such as permanent LNP or other local competition implementation costs.

O R D E R

IT IS ORDERED that:

1. The Petition to Modify Decision (D.) 96-04-052 filed by Pacific Bell (Pacific) is granted in part, consistent with the conclusions of law as set forth above.

2. Comments are solicited from parties addressing how the required data inputs necessary to compute an interim number portability (INP) end-user surcharge based on active telephone numbers as described in Conclusion of Law (COL) 1 above can be derived in the most efficient and least controversial manner based on the existing Total Service Long-Run Incremental Costs for INP previously adopted in the Open Access and Network Architecture Development proceeding (D.96-08-021). As part of their comments, parties shall address what interim percentage allowance would be appropriate to reflect shared and common costs, pending a subsequent true-up.

3. Comments are solicited from Pacific and GTE California regarding the current status of their progress in being able to offer flex-DID or other alternative forms of INP other than through the use of remote call forwarding.

4. The assigned administrative law judge shall establish a schedule for the filing of comments on the various issues called for in this order.

5. The specific modifications to D.96-04-052 necessary to conform with the directives of this decision shall be determined following receipt of parties comments regarding the derivation of appropriate inputs to determine the amount of an end-user INP surcharge consistent with the method described in COL 1 above.

This order is effective today.

Dated October 9, 1997, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners