

Decision 98-12-044 December 17, 1998

**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.

Rulemaking 95-04-043  
(Filed April 26, 1995)

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

Investigation 95-04-044  
(Filed April 26, 1995)

**O P I N I O N**

**Introduction**

In today's order, we adopt end-user surcharges to implement the modified cost recovery approach for the provision of service-provider interim number portability (INP). This conforms to the rules promulgated by the Federal Communications Commission (FCC), as adopted by this Commission in Decision (D.) 97-10-029. In D.98-04-066, we directed carriers to provide the requisite data to implement the modified approach to INP cost recovery adopted in D.97-10-029, as part of our ongoing program to promote the development of a competitive local exchange market. We have made the requisite calculations based on the data submitted by carriers, and have accordingly determined the appropriate end-user surcharges, as adopted below.

**Cost Recovery of INP on a Competitively Neutral Basis**

***Background***

In our initial rules for local exchange service competition applicable to the service territories of Pacific Bell (Pacific) and GTE California Incorporated

(GTEC), we determined that service-provider INP should be implemented.<sup>1</sup> Service-provider INP grants competitive local carriers (CLCs) the ability to offer prospective retail customers the opportunity to retain the use of their existing telephone numbers when changing service providers. This ability facilitates the development of a competitive market.

In D.96-04-052, we authorized INP as an interim measure until permanent number portability could be implemented. We adopted wholesale rates for Pacific's Directory Number Call Forwarding (DNCF) service and GTEC's Service Provider Number Portability service (SPNP). DNCF is Pacific's designation and SPNP is GTEC's designation for an INP wholesale service to CLCs based on the end-office-switch functionality that is also used to provide retail Remote Call Forwarding (RCF) service. Pacific's and GTEC's tariffs placed the entire charge for INP directly on those CLCs whose customers port their telephone numbers.

Subsequent to the issuance of D.96-04-052, the FCC, in conformance with the 1996 Telecommunications Act (Act), adopted guidelines that the states must follow in authorizing cost recovery for currently available number-portability methods.<sup>2</sup>

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].*

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<sup>1</sup> Initial Local Competition Rules D.95-07-054 (Initial Rules), Appendix A, p. 1, in the Competition Rulemaking (R.) 95-04-043 and Investigation (I.) 95-04-044.

<sup>2</sup> 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 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. 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.)

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”).

In D.97-10-029, we concluded that the most acceptable method under the Portability Order for recovery of INP costs was for each carrier to share in the recovery of INP costs 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 concluded that this method best meets the FCC’s test of competitive neutrality since the INP cost burden would not be borne solely by carriers that port numbers. Instead, each facilities-based LEC and CLC that utilizes the network would be allowed to bill end-users for recovery of INP costs in proportion to the total quantity of telephone numbers they each serve.

We further modified D.96-04-052 with respect to the methodology used to determine the cost of INP. In D.96-04-052, we had used direct embedded cost (DEC) as the basis for setting INP rates, noting that INP cost studies based on Total Service Long-Run Incremental Cost (TSLRIC) had not yet been completed. However, the FCC Portability Order requires that the costs of INP be recovered on an incremental basis. Moreover, in D.96-08-021 in the Open Access Network Architecture and Development (OANAD) proceeding (R.93-04-003), we approved TSLRIC studies for the INP services offered by Pacific and GTEC. For Pacific, we specifically approved a TSLRIC study of DNCF service. We also adopted TSLRIC for direct inward dialing (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-based INP. Finally, we approved TSLRIC for GTEC's SPNP service, but deferred ruling on GTEC's proposal to use retail DID as a proxy for DID-based INP.

Below, we determine an end-user surcharge intended to recover the TSLRIC<sup>3</sup> of INP. As directed in D.98-04-066, we have also included an allowance for shared and common costs for INP services within Pacific's territory of 16% and within GTEC's territory of 22%. These percentages reflect allowances specific to Pacific and GTEC which were in the record in their respective interconnection arbitrations. While the OANAD proceeding shall determine on a permanent basis what the shared and common cost allowance should be, we previously concluded that, for interim purposes, the allowances developed in

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<sup>3</sup> As noted in D.98-04-066, for GTEC, such costs will be based on the TSLRIC for INP that were filed in Advice Letter (AL) 8236 as modified by the Commission's resolution of Advice Letter 8236. We make no final judgment herein on the reasonableness of GTEC's TSLRIC for INP, but use its reported costs merely as an interim value, subject to later true up.

arbitration proceedings regarding costs for Pacific and GTEC provide an acceptable result, subject to a true-up.<sup>4</sup>

In D.96-08-021, our adopted TSLRIC figures for INP assumed only carriers actually porting a number would pay for the cost of INP in proportion to the numbers they port. Under the revised calculation performed according to D.97-10-029, the aggregate pool of TSLRIC and shared and common costs for INP is allocated among all active telephone numbers assigned to the end-user customers of facilities-based CLCs, Pacific and GTEC. The need for recovery of INP rates within the service territories of Roseville and Citizens Telephone Companies shall be addressed in a subsequent order.

Pursuant to D.98-04-066, we have collected the following data from certificated carriers: (1) the total quantity of end-user telephone numbers in service as of December 31, 1997, for each 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 which are subject to allocation. We derive an INP end-user-surcharge by dividing the total pool of INP costs for all ported numbers by the total quantity of active end-user telephone numbers<sup>5</sup> as of December 31, 1997. As we noted in D.98-04-066, 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.

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<sup>4</sup> We take official notice of the decision of the United States District Court for the Northern District of California dated September 29, 1998, re: MCI Telecommunications Corporation, et al., vs. Pacific Bell, et al. (No. C 97-0670 SI). In this decision, the court granted MCI's motion for summary judgment to review the Commission's determination adopting a 16% adder for shared and common costs in the MCI/Pacific Bell arbitration. Notwithstanding the court's decision, we shall apply the 16% adder for the limited purpose of the instant order since the interim surcharge is subject to true up.

<sup>5</sup> Active lines include those which are resold to other carriers in accordance with D.98-04-066.

We shall issue a subsequent order establishing procedures to implement the true-up of previously billed INP tariff charges once a final INP surcharge is established based upon the outcome of the OANAD proceeding. The INP surcharge we adopt in today's order is interim only, and subject to the final prices ultimately adopted in the OANAD proceeding. The interim INP end-user surcharge is to be applied prospectively in lieu of the previously approved INP tariff charges billed between carriers.

Based upon the submitted data of carriers, filed under seal, we have separately computed the following interim INP surcharge for carriers operating within the service territories of Pacific and GTEC, respectively:

Derivation of Surcharge within the Pacific and GTEC Service Territory

Line No.	Pacific	GTEC	Item
1	\$0.84	\$2.24	TSLRIC per ported number per month
2	13,396	940	Total ported numbers for all carriers
3	11,252.64	2,105.60	TSLRIC for all ported numbers (Ln.1*Ln.2)
4	18,244,078	4,455,059	Total Active Telephone Lines
5	\$0.000617	\$0.000473	TSLRIC per Active Line (Ln 3/Ln 4)
6	1.16	1.22	Shared and Common Cost Markup Factor
7	\$0.000716	\$0.000577	Total INP Surcharge (monthly basis) (Ln.5*Ln.6)

Because of the large number of active lines in relation to the costs of porting numbers, the resulting unit surcharge per line is significantly less than one cent per line, even on an annualized basis. Since one cent is the smallest monetary denomination that can be collected from customers, we shall permit carriers to impose on end-users a one-cent-per line-per-year charge for the costs of INP. Each carrier, including the ILECs, shall be given the discretion to decide whether to impose the INP surcharge on end-users. Those carriers that elect to impose the INP surcharge are directed to keep records showing the amounts

collected under the one cent INP surcharge so that these collections can be taken into account in determining any true-up of INP amounts once final OANAD costs are determined.

Pacific and GTEC are directed to file amended tariffs for their INP service within 30 days following issuance of this order, removing the tariff charges previously imposed for INP service. All terms and conditions of service other than rates prescribed in the respective INP tariffs shall remain unchanged as a result of this order. All other carriers which have previously concurred in the ILECs' INP tariffs on a reciprocal basis shall concurrently remove any tariff charges from their own INP tariffs. Carriers which elect to impose the one cent INP surcharge on their end-users are likewise directed to file amended retail tariffs which add the end-user charge, as authorized.

#### **Findings of Fact**

1. D.97-10-029 adopted a modified cost-recovery approach to reflect an allocation of INP costs among all facilities-based LECs and CLCs based on the quantity of active end-user telephone numbers, and incremental costs of DNCF plus an allowance for shared and common costs.
2. The modified INP cost-recovery method adopted in D.97-10-029 was responsive to the FCC's First Report and Order on telephone number portability issued July 2, 1996 which required departure from cost-causation principles to a competitively neutral standard for recovery of INP costs.
3. The FCC order further required that the cost measure for INP was to be an incremental and not the direct embedded cost, as was used in determining INP costs and rates in D.96-04-052.
4. INP cost studies based on TSLRIC were approved for Pacific in the OANAD proceeding in D.96-08-021. INP TSLRIC cost studies have not yet been approved for GTEC.

5. D.98-04-066, prescribed that the INP surcharge for GTEC will be based on the TSLRIC for INP that was filed in Advice Letter (AL) 8236 as modified by the Commission's resolution of AL 8236.

6. The costs associated with the offering of INP include shared and common costs based on a markup of 16% for Pacific and 22% for GTEC as prescribed in D.98-04-066.

7. To calculate an INP cost-recovery factor based on the incremental costs from OANAD it is necessary to determine the applicable number of total active telephone numbers and the total amount of TSLRIC associated with ported telephone numbers.

8. D.98-04-066 directed facilities-based carriers to produce the data on active lines and ported numbers to provide an appropriate basis to compute an INP end-user surcharge.

9. D.98-04-066 modified D.97-10-029 to provide for the inclusion of resold lines in the facilities-based carriers' count of active lines for INP cost recovery purposes. CLCs that provide lines through the purchase of the ILECs' unbundled network elements (UNEs) (e.g., loops, switches, etc.) were also required to include such lines in their count.

10. D.98-04-066 determined that telephone numbers assigned to wireless carriers should be excluded from the count of active numbers for INP purposes since wireless carriers are not obligated to provide INP service, and we have no jurisdiction over the rates charged by wireless carriers. Likewise, NDIECs, were to be excluded from the count since they do not offer local service.

11. The monthly surcharge per active line which results from application of the formula adopted in D.98-04-066 is \$0.000716 for Pacific's and \$0.000577 for GTEC's service territory, based upon carrier data submitted.

12. A charge of one cent per line is the smallest monetary denomination that can be collected from customers; however, the resulting surcharge computed



under the adopted formula yields an amount of less than one cent per line even collected on an annual basis.

### **Conclusions of Law**

1. The previously filed tariffs for INP service should be amended, as set forth in Ordering Paragraphs (OPs) 1 and 2 below, to delete the previously authorized tariffed rates in accordance with the provision of D.97-10-029.

2. Carriers should be authorized to pass through to end-users an INP surcharge in accordance with OP 3 below on an interim basis subject to subsequent true-up of the interim amounts.

3. The authorized INP surcharge should be set at one cent per line per year for each active line, since the actual computed surcharge is less than one cent per line and fractions of a cent cannot be collected from customers.

## **O R D E R**

### **IT IS ORDERED that:**

1. Pacific Bell (Pacific) and GTE California Incorporated (GTEC) shall each file amended tariffs for their existing tariffed Interim Number Portability (INP) service within 30 days following issuance of this order, deleting the tariff charges previously imposed for INP service. All terms and conditions of service other than rates prescribed in the respective INP tariffs shall remain unchanged as a result of this order.

2. All carriers which have previously concurred in Pacific's or GTEC's INP tariffs on a reciprocal basis shall concurrently amend and remove any tariff charges from their own INP tariffs.

3. Carriers shall be permitted to recover the costs of INP provisioning through an interim end-user surcharge. The interim authorized surcharge for

carriers providing service in the service territory of either GTEC of Pacific shall be one cent per active line served by the carrier, charged on an annual basis.

4. Carriers which elect to impose the one cent INP surcharge on their end-users shall, prior to implementing the charge, file amended retail tariffs which add the end-user charge, as authorized.

5. The adopted INP surcharges shall remain in effect subject to final INP surcharges determined in the Open Access and Network Architecture Development proceeding, R.93-04-003 and I.93-04-002.

This order is effective today.

Dated December 17, 1998, at San Francisco, California

RICHARD A. BILAS  
President  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners