[5] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR Part 264 Subpart O or Part 265 Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

[6] Where an alternate treatment standard or set of alternate standards has been indicated, a facility may comply with this alternate standard, but only for the Treatment/Regulatory Subcategory or physical form (i.e., wastewater and/or nonwastewater) specified for that alternate standard.

[7] Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

[8] These wastes, when rendered nonhazardous and then subsequently managed in CWA, or CWA-equivalent systems, are not subject to treatment standards. (See § 268.1(c)(3)and (4)).

[9] These wastes, when rendered nonhazardous and then subsequently injected in a Class I SDWA well, are not subject to treatment standards. (See § 148.1(d)).

[10] Between August 26, 1996, and August 26, 1997, the treatment standard for this waste may be satisfied by either meeting the constituent concentrations in this table or by treating the waste by the specified technologies: combustion, as defined by the technology code CMBST at § 268.42 Table 1 of this Part, for nonwastewaters; and, biodegradation as defined by the technolgy code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technology code CMBST at § 268.42 Table 1 of this Part, for wastewaters.

[11] For these wastes, the definition of CMBST is limited to: (1) combustion units operating under 40 CFR 266, (2) combustion units permitted under 40 CFR Part 264, Subpart O, or (3) combustion units operating under 40 CFR 265, Subpart O, which have obtained a determination of equivalent treatment under 268.42 (b).

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

6. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a) and 6926.

Subpart A—Requirements for Final Authorization

7. Section 271.1(j) is amended by revising the entries in Table 2 for August 3, 1998 and for May 4, 2000 to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
*	*	*	*
November 4, 1998	Prohibition on land disposal of newly listed and identified wastes..	3004(g)(4)(C) and 3004(m)	May 4, 1998; 63 FR 24596
November 4, 1998	Prohibition on land disposal of radioactive waste mixed with the newly listed and identified wastes, including soil and debris..	3004(m) 3004(g)(4)(C) and 3004(m)	Do.
*	*	*	*

* * * * *

[FR Doc. 98–17264 Filed 6–26–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 95–116; FCC 98–82]

Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On May 12, 1998, the Commission released a Third Report and Order in CC Docket No. 95–115, adopting measures to distribute the costs of long-term number portability among telecommunications carriers. In this order, the Commission decides that telecommunications carriers shall pay for the shared costs of the number portability regional databases based on each telecommunications carrier's end-user telecommunications revenues in each region, telecommunications carriers shall bear their own carrier-specific costs directly related to providing number portability, incumbent LECs have the option to recover their carrier-specific costs directly related to providing number portability through a five-year end user charge, as well as through number portability query charges to other carriers, and unregulated carriers may recover their carrier-specific costs directly related to providing number portability in any lawful manner. This Third Report and Order ensures that all telecommunications carriers bear the costs of number portability in a competitively neutral manner.

EFFECTIVE DATE: July 29, 1998, except for §§ 52.32(b) and 52.33(a)(1), which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

FOR FURTHER INFORMATION CONTACT: Lloyd Collier at (202) 418–2712, or Neil Fried at (202) 418–1865, Competitive Pricing Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Third Report and Order in CC Docket No. 95–116, In the Matter of Telephone Number Portability, FCC 98–82, RM 8535, adopted May 5, 1998, and released May 12, 1998. The file in its entirety is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, room 239, 1919 M St., N.W., Washington D.C., or copies may be purchased from the Commission's duplicating contractor, ITS, Inc. 1231 20th St., N.W., Washington, D.C. 20036, phone (202) 857–3800.

ANALYSIS OF PROCEEDING

I. Background

A. The Provision of Long-Term Number Portability

The Telecommunications Act of 1996 amends the 1934 Act to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition. Congress added section 251(b)(2) to the 1934 Act, which requires all LECs, both incumbents and new entrants, ''to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.'' In light of Congress' number portability mandate, the Commission released a combined *First Report and Order* (Order) *& Further Notice of Proposed Rulemaking* (Further Notice) (61 FR 38605, July 25, 1996) in July 1996 to begin implementing number portability. Without number portability, customers ordinarily cannot change their local telephone companies unless they change telephone numbers. Under the existing network architecture and the North American Numbering Plan (NANP), a telephone number functions like an address: every number is associated with an individual switch operated by a particular local telephone company in a specific geographic area. The area code, also called the Numbering Plan Area (the NPA), identifies the general geographic area within which the switch provides service. The next three digits of the telephone number (the NXX) identify the switch that serves the customer. The last four digits identify the specific telephone line serving the customer's location. Carriers use this ten-digit number to connect a telephone call to the called party. Thus, if a customer changes local telephone companies and receives service at the same location from a different telephone company providing service from a different switch, the customer's new local telephone company typically must assign the customer a new seven-digit number (NXX code plus line number) associated with the new switch and new telephone line.

2. Number portability technology allows customers to retain their telephone numbers when changing local service providers. Although the Commission did not mandate a specific long-term number portability method, most carriers intend to provide long-term number portability through a location routing number (LRN) architecture. Under an LRN architecture, each switch is assigned a unique ten-digit LRN, the first six digits of which identify the location of that switch. Each customer's telephone number is matched in a regional database with the LRN for the switch that currently serves that telephone number. Each database serves an area that corresponds to one of the original regional Bell Operating Company (RBOC) service territories. Neutral third parties, called local number portability administrators (LNPAs), will administer these regional databases.

3. When a customer changes from one LEC to another, the carrier that wins the customer will ''port'' the customer's number from the former carrier by electronically transmitting (uploading) the new LRN to the administrator of the relevant regional database. This will pair the customer's original telephone number with the LRN for the switch of the new carrier, allowing the customer to retain the original telephone number. The regional database administrators will then electronically transmit (download) LRN updates to carrier-operated local service management systems (LSMSs). Each carrier will distribute this information to service control points (SCPs) or signal transfer points (STPs) that the carrier will use to store and process data for providing number portability.

4. For a carrier to route an interswitch telephone call to a location where number portability is available, the carrier must determine the LRN for the switch that serves the terminating telephone number of the call. Once number portability is available for an NXX, carriers must ''query'' all interswitch calls to that NXX to determine whether the terminating customer has ported the telephone number. Carriers will accomplish this by sending a signal over the SS7 network to retrieve from an SCP or STP the LRN associated with the called telephone number. The industry has proposed, and the Commission has endorsed, an ''N minus one'' (N–1) querying protocol. Under this protocol, the N–1 carrier will be responsible for the query, where ''N'' is the entity terminating the call to the end user, or a network provider contracted by the entity to provide tandem access. Thus the N–1 carrier (*i.e.* the last carrier before the terminating carrier) for a local call will usually be the calling customer's local service provider; the N–1 carrier for an interexchange call will usually be the calling customer's interexchange carrier (IXC). An N–1 carrier may perform its own querying, or it may arrange for other carriers or third parties to provide querying services on its behalf.

5. To route a local call under this system, the originating local service provider will examine the seven-digit number that its customer dialed, for example ''456–7890.'' If the called telephone number is on the originating switch (i.e. an intraswitch call), the originating local service provider will simply complete the call. If the call is interswitch, the originating local service provider will compare the NXX, ''456,'' with its table of NXXs for which number portability is available. If ''456'' is not such an NXX, the originating local service provider will treat the call the same as it did before the existence of long-term number portability. If it is an NXX for which portability is available, the originating local service provider will add the NPA, for instance ''123,'' to the dialed number and query ''(123) 456–7890'' to an SCP containing the LRNs downloaded from the relevant regional database. The SCP will return the LRN for ''(123) 456–7890'' (which would be ''(123) 456 XXXX'' if the customer has not changed carriers, or something like ''(123) 789-XXXX'' if the customer has changed carriers), and use the LRN to route the call to the appropriate switch with an SS7 message indicating that it has performed the query. The terminating carrier will then complete the call. To route an interexchange call, the originating local service provider will hand the call off to the IXC and the IXC will undertake the same procedure.

B. Prior Commission Decisions

6. The *Order*, as modified by the *First Memorandum Opinion and Order on Reconsideration* (First Reconsideration Order) (62 FR 18280, April 15, 1997), requires LECs to implement long-term number portability: (1) in Chicago, Philadelphia, Atlanta, New York, Los Angeles, Houston, and Minneapolis—the largest metropolitan statistical area (MSA) in each of the seven RBOC regions'between October 1, 1997, and March 31, 1998; (2) in the rest of the 100 largest MSAs in quarterly stages between January 1, 1998, and December 31, 1998; and (3) thereafter in switches outside the 100 largest MSAs, within six months of a request by a telecommunications carrier. A number of carriers have received extensions of the March 31, 1998, implementation deadline for certain areas ranging from two to five months.

7. The Commission explained that the statutory definition of number portability requires LECs to implement

number portability in such a way that LEC customers can keep their telephone numbers when they switch to any other telecommunications carrier, including, therefore, when they switch to a commercial mobile radio services (CMRS) provider. The Commission also required in the Order that certain types of CMRS providers be able by December 31, 1998, to route calls to any ported numbers and be able by June 30, 1999, to allow their own customers to take their telephone numbers to other carriers. By its language, section 251(b)(2) requires only that LECs provide number portability, and the 1934 Act, as amended, excludes from the definition of ''local exchange carrier'' those entities engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of such term. Although the Commission declined in the *Order* to address whether CMRS providers are LECs, the Commission exercised authority under sections 1, 2, 4(i), and 332 to require three categories of CMRS providers'cellular providers, broadband personal communications service (PCS) providers, and covered specialized mobile radio (SMR) providers'to provide number portability. The Commission concluded that requiring these CMRS providers to provide number portability would serve the public interest by promoting competition between and among local wireless and wireline carriers, as well as among providers of interstate access service.

8. In the *Order*, the Commission exempted some CMRS providers from the obligation to provide number portability: paging and other messaging service providers, private paging service providers, business radio service providers, providers of land mobile service on 220–222 MHz, public coast stations, public land mobile service providers, 800 MHz air-ground radio-telephone service providers, offshore radio service providers, mobile satellite service providers, narrowband PCS service providers, local SMR licensees, and local multipoint distribution service (LMDS) providers. The Commission reasoned that such carriers currently have little impact on competition for local service.

9. In the *First Reconsideration Order*, the Commission concluded that within the 100 largest MSAs, LECs must provide number portability only in switches for which another carrier has specifically and reasonably requested the provision of number portability. The Commission reasoned that such an approach allows carriers to focus their resources where competitors plan to enter, which is where number portability is likely to have the most impact in the short run on the development of competition for local services. Structuring implementation in this fashion reduces costs, eases the demands on software vendors, and encourages efficient deployment, network planning, and testing. The Commission emphasized, however, that all carriers, even those operating portability-incapable switches, are still responsible for properly routing calls to telephone numbers in locations where number portability is available. Carriers can meet that responsibility either by routing the call to one of their switches that is capable of performing the necessary database query, or by arranging for another carrier or a third party to query the database or route the call.

10. In the *Second Report and Order* (62 FR 48774, September 17, 1997), the Commission determined that if an N–1 carrier arranges with another entity to perform queries on the carrier's behalf, that other entity may charge the N–1 carrier in accordance with requirements to be established in this *Third Report and Order*. The Commission also noted that when an N–1 carrier fails to ensure that a call is queried, the call might inadvertently be routed by default to the LEC that originally served the telephone number. If the number was ported, the LEC incurs costs in redirecting the call. This could happen, for example, if there is a technical failure in the N–1 carrier's ability to query, or if the N–1 carrier fails to ensure that its calls are queried, either through its own query capability or through an arrangement with another carrier or third-party. The Commission determined in the *Second Report and Order* that if a LEC performs queries on default-routed calls, the LEC may charge the N–1 carrier in accordance with requirements to be established in this *Third Report and Order*. The Commission determined further that it would allow LECs to block default-routed calls, but only in specific circumstances when failure to do so is likely to impair network reliability. The Commission also said that it would require LECs to apply this blocking standard to calls from all carriers on a nondiscriminatory basis.

II. The Statutory Framework

A. Federal/State Jurisdiction

11. We conclude that section 251(e)(2) requires the Commission to ensure that carriers bear the costs of providing long-term number portability on a competitively neutral basis for both interstate and intrastate calls. In reaching this conclusion, we note that section 251(e)(2) expressly and unconditionally grants the Commission authority to ensure that carriers bear the costs of providing number portability on a competitively neutral basis.

12. Consequently, we find that section 251(e)(2) authorizes the Commission to provide the distribution and recovery mechanism for all the costs of providing long-term number portability. We conclude that an exclusively federal recovery mechanism for long-term number portability will enable the Commission to satisfy most directly its competitive neutrality mandate, and will minimize the administrative and enforcement difficulties that might arise were jurisdiction over long-term number portability divided. Further, such an approach obviates the need for state allocation of the shared costs of the regional databases, a task that would likely be complicated by the databases' multistate nature. Under the exclusively federal number portability cost recovery mechanism, incumbent LECs' number portability costs will not be subject to jurisdictional separations. Instead, we will allow incumbent LECs to recover their costs pursuant to requirements we establish in this *Third Report and Order*.

B. Scope of Section 251(e)(2)

13. We interpret the terms of section 251(e)(2) in ways that will best implement its goals. The 1996 Act amended the 1934 Act to provide for a pro-competitive, de-regulatory national policy framework and to open all telecommunications markets to competition. Section 251(b)(2) furthers those congressional goals by requiring all LECs to provide number portability so that subscribers of local telephone service can retain their telephone numbers when changing carriers. At the same time, by requiring the Commission to ensure that all telecommunications carriers bear on a competitively neutral basis the costs of providing number portability, section 251(e)(2) seeks to prevent those costs from themselves undermining competition.

14. We conclude that ''the cost[s] of establishing '' number portability'' to be borne on a competitively neutral basis include the costs that LECs incur to meet the obligations imposed by section 251(b)(2), as well as the costs other telecommunications carriers'such as IXCs and CMRS providers'incur for the industry-wide solution to local number portability.[1] The Act defines number

[1] Under the N–1 protocol recommended by the industry under the auspices of the NANC, and the

portability as the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another. Thus, ''the costs of number portability'' are the costs of enabling telecommunications users to keep their telephone numbers without degradation of service when they switch carriers. Such costs include the costs a carrier incurs to make it possible to transfer a telephone number to another carrier, as well as the costs involved in making it possible to route calls to customers who have switched carriers (i.e., the costs involved in making the N–1 querying protocol possible). IXCs and CMRS providers, as well as LECs, incur these costs.

15. We also adopt the tentative conclusion in the *Further Notice* that costs not directly related to providing number portability, as defined further below, are not costs of providing number portability. Consequently, such costs need not ''be borne by all telecommunications carriers on a competitively neutral basis'' under section 251(e)(2). Section 251(e)(2) requires that the costs of providing number portability be borne on a competitively neutral basis. Costs not directly related to providing number portability encompass a wide range of costs that carriers incur to provide telecommunications functions unrelated to number portability. We find no indication that Congress intended to place such costs within the scope of the competitive neutrality requirement of section 251(e)(2). Because costs not directly related to providing number portability are not subject to 251(e)(2), the Commission is not obligated under that section to create special provisions to ensure that they are borne on a competitively neutral basis.

16. We also conclude that section 251(e)(2) requires the Commission to ensure that number portability costs are distributed among, as well as recovered by, carriers on a competitively neutral basis. Despite the Commission's tentative conclusion that section 251(e)(2) only applies to the distribution of number portability costs, we now find ambiguous the scope of the language requiring that costs ''be borne * * * on a competitively neutral basis.'' We find further that reading section 251(e)(2) as applying to both distribution and recovery best achieves the congressional goal of ensuring that the costs of providing number portability do not restrict the local competition that number portability is intended to encourage. Because the manner in which carriers recover the costs of providing number portability could affect their ability to compete, we cannot ensure that number portability costs are ''borne by all telecommunications carriers on a competitively neutral basis'' unless we address both distribution and recovery. If the Commission ensured the competitive neutrality of only the distribution of costs, carriers could effectively undo this competitively neutral distribution by recovering from other carriers. For example, an incumbent LEC could redistribute its number portability costs to other carriers by seeking to recover them in increased access charges to IXCs. Therefore, we find that section 251(e)(2) requires the Commission to ensure that both the distribution and recovery of intrastate and interstate number portability costs occur on a competitively neutral basis.

C. Competitive Neutrality

17. We adopt the Commission's tentative conclusion to apply to long-term number portability the Order's definition of competitive neutrality as requiring that the cost of number portability borne by each carrier does not affect significantly any carrier's ability to compete with other carriers for customers in the marketplace. Applying this definition will ensure that the cost of implementing number portability does not undermine the goal of the 1996 Act to promote a competitive environment for the provision of local communications services.

18. We also adopt the Commission's tentative conclusion to apply to long-term number portability the two-part test the Commission developed to determine whether carriers will bear the interim costs of number portability on a competitively neutral basis. Under this test, the way carriers bear the costs of number portability: (1) must not give one service provider an appreciable, incremental cost advantage over another service provider when competing for a specific subscriber, and (2) must not disparately affect the ability of competing service providers to earn a normal return.

19. Accordingly, we adopt for purposes of long-term number portability the *Order's* definition of competitive neutrality as requiring that the cost of number portability borne by each carrier does not affect significantly any carrier's ability to compete with other carriers for customers in the marketplace. We also adopt the two-part test for determining whether this definition is met. We apply this interpretation of competitive neutrality to the shared costs of providing number portability below. We find it unnecessary to address whether to apply our competitive neutrality principles to states that opt out of the regional database plan because no state elected to opt out by the July 1, 1997, deadline. We apply the interpretation of competitive neutrality to the carrier-specific costs directly related to providing number portability below.

III. Categorization of Costs

20. We adopt the Commission's tentative conclusion to divide the costs raised by this proceeding into three categories: (1) shared costs; (2) carrier-specific costs directly related to providing number portability; and (3) carrier-specific costs not directly related to providing number portability. The division of costs between shared costs and carrier-specific costs directly related to providing number portability recognizes that some costs of providing number portability are incurred by regional database administrators, while others are incurred by carriers in the first instance. The division between carrier-specific costs directly related to providing number portability and carrier-specific costs not directly related to providing number portability recognizes that some component of the costs carriers incur will provide carriers with benefits unrelated to number portability.

21. We adopt the Commission's tentative definition of shared costs as 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. We also conclude that once the shared costs are allocated they are attributable to specific carriers, at which point we will treat them as carrier-specific costs directly related to providing number portability.

22. We also adopt the Commission's tentative subcategorization of the shared costs into nonrecurring costs, recurring costs, upload costs, and download costs. We clarify, however, that the shared upload and download costs include only the costs that the database administrators incur to process uploads and downloads; the costs that the carriers incur individually to process uploads and downloads are carrier-specific costs directly related to providing number portability.

Commission's requirements for the provision of long-term number portability, almost all telecommunications carriers'including LECs, IXCs, and CMRS providers'will incur costs of number portability.

23. We further conclude that query costs are not shared costs initially incurred by the regional database administrators, but are carrier-specific costs directly related to providing number portability. At the time of the *Further Notice*, the Commission's understanding had been that the regional administrators might perform queries for carriers. In that case, query costs might have constituted shared costs because the database administrators would have incurred costs for the industry as a whole, and the costs would need to be allocated among individual carriers. The industry has chosen, however, not to adopt this approach to number portability. Instead, the N–1 carrier will incur all querying costs individually in the first instance, either by querying its own copy of data downloaded from the regional databases, or by arranging for the querying of such a database copy maintained by another carrier or other third party. Because the regional database administrators will not perform queries on behalf of carriers, query costs are more appropriately considered carrier-specific costs directly related to providing number portability.

24. We conclude that carrier-specific costs directly related to providing number portability are limited to costs carriers incur specifically in the provision of number portability services, such as for the querying of calls and the porting of telephone numbers from one carrier to another. Costs that carriers incur as an incidental consequence of number portability, however, are not costs directly related to providing number portability.

25. We reject the requests of some commenters that we classify the entire cost of an upgrade as a carrier-specific cost directly related to providing number portability just because some aspect of the upgrade relates to the provision of number portability. Carriers incur costs for software generics, switch hardware, and OSS, SS7 or AIN upgrades to provide a wide range of services and features. Consequently, only a portion of such joint costs are carrier-specific costs directly related to providing number portability. Thus, we will consider as subject to the competitive neutrality mandate of section 251(e)(2) all of a carrier's dedicated number portability costs, such as for number portability software and for the SCPs and STPs reserved exclusively for number portability. We will also consider as carrier-specific costs directly related to the provision of number portability that portion of a carrier's joint costs that is demonstrably an incremental cost carriers incur in the provision of long-term number portability. Apportioning costs in this way will further the goals of section 251(e)(2) by recognizing that providing number portability will cause some carriers, including small and rural LECs, to incur costs that they would not ordinarily have incurred in providing telecommunications service. At the same time, this approach recognizes that some upgrades will enhance carriers' services generally, and that at least some portion of such upgrade costs are not directly related to providing number portability.

26. Because carrier-specific costs directly related to providing number portability only include costs carriers incur specifically in the provision of number portability, carriers may not use general overhead loading factors in calculating such costs. Carriers already allocate general overhead costs to their rates for other services, and allowing general overhead loading factors for long-term number portability might lead to double recovery. Instead, carriers may identify as carrier-specific costs directly related to providing long-term number portability only those incremental overheads that they can demonstrate they incurred specifically in the provision of long-term number portability.

27. As discussed below, we are permitting incumbent LECs to recover their number portability costs in federally tariffed end-user charges and query services. To facilitate determination of the portion of joint costs carriers shall treat as carrier-specific costs directly related to providing number portability, and to facilitate evaluation of the cost support that carriers will file in their federal tariffs, we are requesting that carriers and interested parties file comments by August 3, 1998 proposing ways to apportion the different types of joint costs. Carriers and interested parties may file reply comments by September 16, 1998. We will delegate authority to the Chief, Common Carrier Bureau, to determine appropriate methods for apportioning joint costs among portability and nonportability services, and to issue any orders to provide guidance to carriers before they file their tariffs, which are to take effect no earlier than February 1, 1999.

28. We decline to create special cost categories for the number portability costs of small and rural carriers. The Commission's definitions of carrier-specific costs directly and not directly related to providing number portability will enable all carriers, including small and rural carriers, as well as carriers providing Extended Area Service, to identify the costs subject to section 251(e)(2). The three cost categories the Commission has created account for all potential number portability costs and provide workable distinctions for the purposes of implementing section 251(e)(2).

29. Creating unique cost categories for wireless carriers is also unnecessary at this time. The Commission's definitions are not tied to unique technological constraints of wireline communications, and nothing in the record leads us to conclude that the three cost categories are too narrow to apply to the number portability costs of wireless carriers. Wireless carriers, like wireline carriers, will depend upon the regional databases, and the record does not suggest that the costs of the regional databases are disproportionately affected by any one industry segment.

IV. Costs of the Regional Databases

A. Distribution of Shared Costs: Allocation v. Usage-Based Rates

30. We require telecommunications carriers to pay for the database administrators' nonrecurring, recurring, upload, and download costs pursuant to an allocator, which we select below, rather than on a usage-sensitive basis. We have used the two-prong competitive neutrality test to ensure that the allocator we choose distributes these costs on a competitively neutral basis. Once these shared costs are distributed to telecommunications carriers, we treat each carrier's portion of the costs as a carrier-specific cost directly related to providing number portability. Because telecommunications carriers will recover these costs as carrier-specific costs directly related to providing number portability, which we discuss below, we need not address their recovery here.

31. Distributing the shared costs among telecommunications carriers in proportion to database use would shift these costs to telecommunications carriers that win more customers because such carriers will perform more uploads. At the outset of number portability, these carriers are more likely to be competitive LECs. Consequently, usage-sensitive distribution of the shared costs could give one service provider an appreciable, incremental cost advantage over another service provider when competing for a specific subscriber, as well as disparately affect the ability of competing service providers to earn a normal return. Although the record does not show conclusively that usage-based charges would hamper materially a carrier's ability to compete for subscribers, we

believe it prudent at this early stage in the deployment of number portability to minimize such risk.

32. Moreover, assessing shared costs on a usage-sensitive basis could discourage carriers from performing uploads and downloads, or at least penalize those carriers that do so more frequently. The entire industry benefits from the maintenance of reliable regional databases for providing number portability: unless carriers download data, they will be unable to terminate traffic to the appropriate end-user; unless carriers upload ported numbers to the databases, the databases will be inaccurate, making downloads useless for current and future database participants alike. Thus, all carriers that port telephone numbers and all carriers that terminate calls to portability-capable NXXs depend on the timely uploading and downloading of information to and from the regional databases to ensure an accurate database and the proper routing of telephone calls. Furthermore, all telecommunications carriers that depend on the availability of telephone numbers will benefit from number portability because it allows subscribers to retain their telephone numbers when changing local service providers, and because it facilitates the conservation of telephone numbers through number pooling.

33. We will not adopt a separate distribution methodology for wireless carriers. The record indicates that wireless carriers will use the regional databases in the same manner as wireline carriers. Consequently, we see no reason to treat wireless carriers differently than wireline carriers with respect to the distribution of the shared costs.

B. The Allocator

34. As part of its management duties under § 52.26 of the Commission's Rules, the LNPA of each regional database must collect sufficient revenues to fund that database. We will require the LNPA of each regional database to do this by allocating the costs of each regional database among carriers in proportion to each carrier's intrastate, interstate, and international end-user telecommunications revenues attributable to that region. The Commission adopted end-user telecommunications revenues in the *Universal Service Order* (62 FR 32862, June 17, 1997) as the assessment base for determining contributions to universal support mechanisms. We will require carriers to include intrastate, interstate, and international revenues in calculating end-user revenues because number portability will affect all such services. An end-user telecommunications revenue allocator is similar to a retail-revenues allocator in that both are based on telecommunications revenues that carriers collect from end-users. Unlike retail-revenues, however, end-user telecommunications revenues includes revenues derived from subscriber line charges (SLCs).[2] End-user telecommunications revenues also include revenues collected from carriers that purchase telecommunications services for their own internal use.

35. The end-user telecommunications revenue allocator meets the two-prong competitive neutrality test. First, the allocator will not give one service provider an appreciable, incremental cost advantage when competing for a subscriber. Because the end-user telecommunications revenue allocator will distribute the shared costs of the regional databases to each carrier in proportion to that carrier's end-user revenues, it will cost carriers approximately the same increase in shared costs to win a specific subscriber. For example, if one of two LECs wins a third LEC's subscriber, whichever of the two LECs wins the subscriber will win the end-user revenue that subscriber generates, which will increase its allocated portion of the shared costs. Because the subscriber is likely to use approximately the same amount of local service regardless which of the two competing LECs provides service to the subscriber, the incremental shared cost one of the two LECs would experience if it had won the subscriber would be about the same as the incremental shared cost the other would experience if it won the subscriber. This increase would also approximately equal the decrease in shared costs the third carrier would experience, having lost the subscriber. These amounts may not be exactly the same because each of the three carriers may have different rates and may not collect exactly the same revenue from that subscriber. The difference, however, will not be significant enough to create an appreciable, incremental cost disadvantage. Furthermore, any difference will not be caused by providing number portability, but by differences in the underlying efficiency, services, and rates of each of the carriers. Thus we believe the allocator will not itself create an appreciable, incremental cost advantage that was not already present even absent number portability.

[2] The SLC is a flat monthly per-line rate that the end user pays.

36. Second, allocating shared costs in proportion to end-user revenues will prevent the shared costs from disparately affecting the ability of carriers to earn a normal return. Because carriers' allocations of the shared costs will vary directly with their end-user revenues, their share of the regional database costs will increase in proportion to their customer base. Thus, no carrier's portion of the shared costs will be excessive in relation to its expected revenues, and its allocated share will only increase as it increases its revenue stream. Consequently, the end-user revenues allocator will not disparately affect competing carriers' abilities to earn a normal return. An end-user revenues allocator will also be easy to administer because carriers already track their sales to end-users for billing purposes, and will be familiar with the end-user revenues allocator from its use for universal service support contributions. Although an end-user revenues allocator will relieve pure wholesalers, which have no end-user revenue, from directly bearing shared costs, the end-user method does not exclude wholesale revenues from the revenue base that determines carriers' shared costs. As the Commission explained in the *Universal Service Order,* wholesale charges are built into retail rates, and thus the allocator still reflects wholesale revenue. This is competitively neutral because it avoids double-counting revenues, and because wholesale carriers are not competing with retail carriers for end users in the marketplace.

C. Carriers Required To Share the Costs of the Regional Databases

37. We will require allocation of the shared costs among all telecommunications carriers because section 251(e)(2) states that ''[t]he cost of establishing * * * number portability shall be borne by all telecommunications carriers on a competitively neutral basis.'' Our end-user revenues allocator, by its nature, does not reach carriers, such as pure wholesalers, that do not have end-user revenues. Because section 251(e)(2) requires all carriers to bear the costs of number portability on a competitively neutral basis, we will require carriers that do not have end-user revenues to pay $100 per year per region as their statutory share of the shared costs. We believe that $100 represents a fair contribution for carriers that do not have end-user revenues, but can revisit this issue should it become necessary. This fee will not give any such carriers an appreciable, incremental cost advantage when competing for a

subscriber because such carriers do not compete for end-user customers. Moreover, this charge will be the same for all such carriers. Thus, it will not create any disadvantage to the extent these carriers are competing with each other. This fee is also not likely to disparately affect the ability of competing carriers to earn a normal return because such a nominal charge is unlikely to affect a carrier's return and, again, because all such carriers will face the same charge. Consequently, such a fee is competitively neutral.

D. Regional v. National Allocation of Regional Database Costs

38. We will require telecommunications carriers to bear the shared costs on a regional basis because such a plan is most consistent with the regional nature of the databases, and because a national approach would require designation of a national administrator. As part of its duties established in § 52.26 of the Commission's Rules,[3] each local number portability administrator of a regional database shall collect sufficient revenues from all telecommunications carriers providing telecommunications service in areas that regional database serves to fund the operation of that regional database. Thus, after subtracting the charges it collects from telecommunications carriers with no end-user revenues, each database administrator shall distribute the remaining shared costs based upon each remaining telecommunications carrier's proportion of the end-user revenues collected by all telecommunications carriers in that region. To apply the end-user revenues allocator, administrators may request regional end-user revenues data from telecommunications carriers once a year. We direct telecommunications carriers to comply with such requests. One of the objectives of the biennial review of our regulations required under the Communications Act is to consider ways to reduce filing burdens on carriers. The Commission may further consider in the biennial review or other proceedings how best to administer the allocation of the shared costs.

39. We are aware that some carriers have already begun paying their regional database administrators based on temporary agreements negotiated by the regional LLCs. We will permit, but not require, each regional administrator and LLC to adjust prospectively through a reasonable true-up mechanism the future bills of those carriers that participated in such agreements so that the shared costs each such carrier will have contributed approaches what those carriers would have paid had an end-user telecommunications revenue allocator been in place when carriers started paying the regional administrators. Permitting the regional administrators and LLCs to perform such true-ups ensures that costs are recovered from carriers in a manner consistent with our rules, while accounting for the period prior to the effective date of our rules and recognizing that agreements may have been reasonable mechanisms to recover regional database costs on a temporary basis pending this *Third Report and Order*.

V. Carrier-Specific Costs Directly Related to Providing Number Portability

40. We will allow but not require incumbent LECs subject to rate-of-return or price-cap regulation to recover their carrier-specific costs directly related to providing number portability through a federal charge assessed on end-users. As noted, we recognize consumers' sensitivity to end-user charges. Under the circumstances before us, however, we conclude that allowing carriers to recover number portability costs in this manner will best serve the goals of the statute. The Commission has only two sources from which it may allow carriers to recover costs in the federal jurisdiction: charges IXCs pay LECs for exchange access, and end-user charges. Because number portability is not an access-related service and IXCs will incur their own costs for the querying of long-distance calls, we will not allow LECs to recover long-term number portability costs in interstate access charges. Nor would it likely be competitively neutral to do so. We note further that, like long-term number portability, the advent of equal access and 800 number portability required carriers to incur significant costs to modify their networks, although these costs were not recovered in federal end-user charges. These improvements led to increased competition and substantial long-term benefits to consumers. We anticipate a similarly positive effect for consumers with respect to the impact of number portability, namely the increased choice and lower prices that result from the competition that number portability helps make possible. We also note that number portability will facilitate number pooling, which will help forestall telephone-number exhaust.[4]

41. Carriers not subject to rate regulation—such as competitive LECs, CMRS providers, and non-dominant IXCs—may recover their carrier-specific costs directly related to providing number portability in any lawful manner consistent with their obligations under the Communications Act.[5] Requiring incumbent LECs to bear their own carrier-specific costs of providing number portability and allowing them to recover those costs from their own customers, while leaving other carriers unregulated, meets our competitive neutrality standard that number portability cost distribution and recovery mechanisms: (1) not give one service provider an appreciable, incremental cost advantage over another service provider when competing for a specific subscriber, and (2) not disparately affect the ability of competing service providers to earn a normal return.

42. Requiring incumbent LECs to bear their own carrier-specific costs directly related to providing number portability will not disadvantage any telecommunications carrier because under an LRN implementation of long-term number portability a carrier's costs should vary directly with the number of customers that carrier serves. Our examination of the present record and cost data that some carriers have provided indicates that incumbent LECs, competitive LECs, and CMRS providers competing in the local service market are likely to have approximately the same long-run incremental number portability cost of winning a subscriber. Incumbent LECs will likely have large absolute costs because of their large networks, but they also will have a large customer base over which to spread those costs; competitive LECs and CMRS providers will likely incur fewer absolute costs because of their smaller networks, but they will also likely have smaller customer bases over which to spread those costs.

43. Some small LECs and CMRS providers may find that their smaller customer bases make adding number portability capability in their own

[3] These duties include all management tasks required to run the regional databases.

[4] Until now, local service providers had to be assigned entire NXXs, even if they did not need all 10,000 of the NXX's telephone numbers. With the advent of number portability, carriers can share NXXs and pool unused telephone numbers, which results in more efficient allocation of telephone numbers and reduces the need for measures such as area-code overlays to combat telephone number exhaust.

[5] Although generally not rate regulated, competitive LECs, CMRS providers, and IXCs—as telecommunications carriers—remain subject to the Communications Act and Commission rules.

networks uneconomical. Such carriers can benefit from economies of scale similar to those of incumbent LECs, however, by arranging for another carrier or third-party provider to provide number portability functionality for them, as it appears that a market for number portability services may develop. Similarly, they may enter into cooperative agreements with other small carriers. Conversely, such carriers might install number portability in their networks and sell any excess number portability capacity to other carriers. Because resellers will simply be reselling the number portability capability of a facilities-based carrier, we would expect that resellers will also have comparable incremental number portability costs. Similarly, we would expect that carriers competing for interexchange customers will bear the costs of providing number portability associated with N–1 queries in rough proportion to the number of interexchange customers they serve; the more customers they win, the more queries they must perform to terminate those customers' calls. IXCs and CMRS providers can either query interexchange calls themselves or arrange for other carriers or third-party providers to provide querying service for them.

44. Regulating the recovery of number portability costs by incumbent LECs, but not by competitive LECs, CMRS providers, and IXCs, also will not place any carrier at a competitive disadvantage. Creating an optional end-user charge for incumbent LECs ensures that such carriers have a reasonable opportunity to recover their costs and at the same time allows carriers to forego some or all of such charges if they deem it necessary to compete in the local service market. Similarly, unregulated carriers may recover their costs in end-user charges if they choose to do so. Regulating incumbent LEC recovery should not disadvantage incumbent LECs as compared to competitive LECs because competitive LECs also have number portability costs under LRN. If a customer does switch to a competitive LEC, that customer may have to pay end-user charges or service rates that recover the competitive LEC's portability costs. Thus, the customer's incentive to leave the incumbent LEC is offset by the fact that the customer would then have to pay charges that recover the competitive LEC's number portability costs. Therefore, incumbent LECs are unlikely to have a material disadvantage in competing for subscribers under our recovery mechanism.

45. We also observe that under LRN-based long-term number portability the LEC serving the customer who places a local call will generally be responsible for the query. Thus, winning a customer shifts responsibility for the queries needed to complete that customer's local calls from the original carrier to the acquiring carrier. Similarly, the IXC serving the customer who places an interexchange call will be responsible for any query needed. Consequently, under the LRN approach to number portability, query costs follow customers, and requiring each carrier to bear its own carrier-specific costs directly related to providing number portability is competitively neutral.

46. Under the requirements we adopt today, an incumbent LEC may recover its carrier-specific costs directly related to providing long-term number portability to end users by establishing a monthly, number portability charge in tariffs filed with the Commission. We determine, however, that recovery from end users should be designed so that end users generally receive the charges only when and where they are reasonably able to begin receiving the direct benefits of long-term number portability. To achieve this, we will allow the monthly number-portability charge to begin no earlier than February 1, 1999, on a date the incumbent LEC carrier selects, and to last no longer than five years. We choose this start date for the federal end-user charge because by the end of 1998, under the implementation schedule the Commission has mandated for number portability, a large proportion of customers will reside in areas where number portability is available: the largest 100 MSAs.[6] In contrast, if the end-user charge were permitted to start immediately, substantially fewer customers would be in areas where number portability is available. Thus, the February 1, 1999, start date will better tailor recovery to areas where customers can receive number portability than would an earlier start date for recovery. We choose February 1, 1999, rather than January 1, 1999, to provide a brief additional time-period to ensure that number portability has been implemented before customers incur charges, and because carriers will also be filing tariff revisions to take effect January 1, 1999, to implement PICC and SLC adjustments.

47. In addition, we will allow an incumbent LEC to assess the monthly charge only on end users it serves in the 100 largest MSAs, and end users it serves outside the 100 largest metropolitan statistical areas from a number-portability-capable switch. Because carriers may make any switch number-portability capable, this approach will encourage carriers to install number portability and help ensure that end-users are assessed number portability charges only where they are reasonably likely to be benefitting from number portability. If a carrier receives an extension past February 1, 1999, for one of the 100 largest MSAs, the carrier may not assess the monthly charge in that MSA until it begins providing long-term number portability in the MSA. The incumbent local exchange carrier shall levelize[7] the monthly number-portability charge over five years by setting a rate for each charge at which the present value of the revenue recovered by the charge equals the present value of the cost being recovered. The carriers shall use a discount rate equal to the rate of return on investment which the Commission has authorized for regulated interstate access services pursuant to Part 65 of the Commission's Rules. Currently, this rate is 11.25 percent. We require levelization of the monthly charge to protect consumers from varying rates. Incumbent LECs may collect less than the maximum allowable charge, or decline to collect the charge, from some or all of their customers so long as they do so in a reasonable and nondiscriminatory manner. Thus we will not, for example, allow incumbent LECs to offset such lower charges by collecting higher charges in areas where no competitive carriers are present.

48. We choose the five-year period for the end-user charge because it will enable incumbent LECs to recover their portability costs in a timely fashion, but will also help produce reasonable charges for customers and avoid imposing those charges for an unduly long period. A longer period would increase the total charges consumers pay because, as discussed, carriers' unrecovered capital investment will be subject to an 11.25 percent return, while a shorter period would increase the monthly charge to consumers. We find that a five-year period effectively balances these concerns. After a carrier

[6] The top 100 MSAs comprise approximately 61.1% of all subscriber lines, a conservative estimate, based on our calculation that approximately 61.1% of the United States population resides in the 100 largest MSAs. We calculated this percentage from population estimates of the United States Census Bureau.

[7] A levelized rate is one that is calculated to remain constant over a recovery period and is set at the level at which the discounted present value of the stream of payments is equal to the discounted present value of the stream of costs over the period.

establishes its levelized end-user charge in the tariff review process we do not anticipate that it may raise the charge during the five-year period unless it can show that the end-user charge was not reasonable based on the information available at the time it was initially set. Furthermore, once incumbent LECs have recovered their initial implementation costs, number portability will be a normal network feature, and a special end-user charge will no longer be necessary to ensure that incumbent LECs recover their number portability costs on a competitively neutral basis. Carriers can recover any remaining costs through existing mechanisms available for recovery of general costs of providing service.

49. We will allow incumbent LECs to assess one monthly number-portability charge per line, except that one PBX trunk shall receive nine monthly number-portability charges and one primary rate interface integrated services digital network line (PRI ISDN line) shall receive five monthly number-portability charges. As the Commission observed in the access charge reform proceeding, a PBX trunk provides on average the equivalent service capacity of nine Centrex lines. *See In re Access Charge Reform*, Second Order on Reconsideration and Memorandum Opinion and Order (62 FR 56120, October 29, 1997). We set the PBX charge at nine times the level of the ordinary charge because Centrex and PBX arrangements are functionally equivalent. To do otherwise could encourage a large customer to choose one of these arrangements over the other because of the number portability charge, and thus would not be competitively neutral. Similarly, the access charge reform proceeding set a five to one equivalency ratio for PRI ISDN lines, and we apply that equivalency ratio here. To further our goals for the Lifeline Assistance Program, carriers may not impose the monthly number-portability charge on customers in that program.

50. The incumbent LEC may assess the monthly charge on resellers of the incumbent LEC's local service, as well as on purchasers of switching ports as unbundled network elements under section 251 of the Communications Act, because the incumbent LEC will be providing the underlying number portability functionality even though the incumbent LEC will no longer have a direct relationship with the end user. Thus, it appears that the reseller and the purchaser of the unbundled switch port will receive all their number portability functionality through these arrangements. Consequently, allowing the incumbent LEC to assess the charge will be competitively neutral because the reseller and the purchaser of the switch port will incur the charge in lieu of costs they would otherwise incur in obtaining long-term number portability functionality elsewhere. The unregulated reseller and purchaser of the switch port may recover in any lawful manner the charges the incumbent LEC assesses on them. The incumbent local exchange carrier may not assess the monthly number-portability charge on carriers that purchase the incumbent local exchange carrier's local loops as unbundled network elements under section 251. We do not allow the incumbent LEC to assess such a charge because the unbundled loop does not contain the number portability functionality. The purchaser of the unbundled loop will still be responsible for providing such functionality, and thus incurring elsewhere the corresponding cost. Congress has directed the Commission to provide for the recovery of number portability costs. Because we have so provided in this proceeding, we presume that state commissions will not include the costs of number portability when pricing unbundled network elements.

51. Local service providers may query calls for other carriers by arrangement, or may receive unqueried, default-routed traffic when the N–1 carrier has not performed the query. Thus we also will allow incumbent LECs to recover from N–1 carriers in a federally tariffed query-service charge their carrier-specific costs directly related to providing prearranged and default query services. Other carriers required or permitted to file federal tariffs may also tariff query services. Carriers shall indicate in the cost support section of their tariffs the portion of their carrier-specific costs directly related to providing number portability attributable to the number portability services they provide end users, and that portion attributable to the number portability query services they provide on behalf of other carriers.

52. All the RBOCs and GTE have submitted, and periodically revised, estimates of the costs they will incur in implementing LRN number portability. In reviewing the record, we observe a wide variation among companies' estimated costs and their categorization of those costs as directly related or not directly related to providing number portability. We remind the incumbent LECs that only costs directly related to providing number portability are recoverable through the long-term number portability cost recovery mechanism we establish in this *Third Report and Order.* As discussed above, the Chief, Common Carrier Bureau, will further consider methods of identifying the portion of joint costs that incumbent LECs should treat as carrier-specific costs directly related to providing number portability.

VI. Regulatory Flexibility Act Analysis

53. As required by section 603 of the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice.* The Commission sought written public comments on the proposals in the *Further Notice,* including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this *Third Report and Order* is as follows:

54. Need for and Objectives of Rules: The Commission, in compliance with sections 251(b)(2), 251(d)(1), and 251(e)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, adopts rules and procedures intended to ensure the implementation of telephone number portability with the minimum regulatory and administrative burden on telecommunications carriers. In implementing the statute, the Commission has the responsibility to adopt rules that will implement most quickly and effectively the national telecommunications policy embodied in the Act and to promote the pro-competitive, deregulatory markets envisioned by Congress. Congress has recognized that number portability will lower barriers to entry and promote competition in the local exchange marketplace. To prevent the cost of number portability from itself becoming a barrier to local competition, however, section 251(e)(2) requires that ''[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.''

55. Summary of Significant Issues Raised by the Public in Response to the IRFA: There were no comments submitted specifically in response to the IRFA. However, in their general comments, some commenters assert that if competition is to emerge in the local exchange market the regulatory standards adopted by the Commission to recover the cost of implementing long-term number portability should not disproportionately burden small entities, especially new entrants. In the *Third Report and Order,* we adopt rules and regulations to ensure that the way

all telecommunications carriers, including small entities, bear the costs of number portability does not significantly affect any carrier's ability to compete with other carriers for customers in the marketplace.

56. Description and Estimate of Number of Small Businesses to Which Rules Will Apply: The Regulatory Flexibility Act generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). According to the SBA's regulations, entities engaged in the provision of telephone service may have a maximum of 1,500 employees in order to qualify as a small business concern. This standard also applies in determining whether an entity is a small business for purposes of the RFA.

57. Our rules governing long-term number portability cost recovery apply to all telecommunications carriers, including incumbent LECs, new LEC entrants, and IXCs, as well as cellular, broadband PCS, and covered SMR providers. Small incumbent LECs subject to these rules are either dominant in their field of operations or are independently owned and operated, and, consistent with the Commission's prior practice, are excluded from the definition of ''small entities'' and ''small business concerns.'' Accordingly, our use of the terms ''small entities'' and ''small businesses'' does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this analysis and use the term ''small incumbent LECs'' to refer to any incumbent LECs that arguably might be defined by the SBA as ''small business concerns.''

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

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

60. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rules: The *Third Report and Order* concludes that the costs raised in this proceeding should be divided into three categories: shared costs, carrier-specific costs directly related to number portability, and carrier-specific costs not directly related to number portability. Shared costs are those costs incurred on behalf of the industry as a whole, such as the costs of the regional database administrator to build, operate, and maintain the databases needed to provide number portability. The *Third Report and Order* concludes that all telecommunications carriers with end-user revenues are required to pay an allocated portion of the shared costs incurred by the regional database administrator in proportion to that carrier's international, interstate, and intrastate end-user telecommunications revenues for that region. While carriers already track their sales to end-users for billing purposes, they will need to identify their regional end-user revenues. That information, along with periodic updates, must be provided to the regional database administrator for the appropriate allocation of shared costs.

61. The *Third Report and Order* requires incumbent LECs to maintain records that detail both the nature and specific amount of those carrier-specific costs that are directly related to number portability, and those carrier-specific costs that are not directly related to number portability. The *Third Report and Order* directs carriers and interested parties to file comments by August 3, 1998, and reply comments by September 16, 1998, proposing ways to apportion the different types of joint costs between portability and nonportability services. The *Third Report and Order* requires incumbent LECs that choose to recover their carrier-specific costs directly related to providing number portability to use federally-tariffed end-user charges.

62. Steps Taken to Minimize Impact on Small Entities Consistent with Stated Objectives: The record in this proceeding indicates that the need for customers to change their telephone numbers when changing local service providers is a barrier to local competition. Requiring number portability, and ensuring that all telecommunications carriers bear the costs of number portability on a competitively neutral basis, will make it easier for competitive providers, many of which may be small entities, to enter the market. We have attempted to keep regulatory burdens on all local exchange carriers to a minimum to ensure that the public receives the benefits of the expeditious provision of service provider number portability in accordance with the statutory requirements. For example, the *Third Report and Order* concludes that all telecommunications carriers with end-user revenues are required to pay an allocated portion of the shared costs incurred by the regional database administrator in proportion to that carrier's international, interstate, and intrastate end-user telecommunications revenues for the region. Apportioning shared costs in this way will further the statutory purpose of ensuring that carriers bear the costs of number portability on a competitively neutral basis. Furthermore, the *Third Report and Order* concludes that regulated

carriers may identify that portion of their joint costs that is demonstrably an incremental cost that they incurred in the provision of long-term number portability. Allowing such identification recognizes that number portability will cause some carriers, including small entities, to incur costs that they would not ordinarily have incurred in providing telecommunications services. The *Third Report and Order* also concludes that non-dominant carriers, such as competitive LECs, CMRS providers, and IXCs—some of which will be small entities—are not subject to extensive regulation and may recover their number portability costs in any manner otherwise consistent with Commission rules and the Communications Act.

63. Report to Congress: The Commission shall send a copy of this FRFA, along with this *Third Report and Order,* in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. A copy of the *Third Report and Order* and this FRFA (or summaries thereof) will also be published in the **Federal Register** and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

VII. Paperwork Reduction Act

64. This *Third Report and Order* concludes that the costs raised in this proceeding should be divided into three categories: shared costs, carrier-specific costs directly related to number portability, and carrier-specific costs not directly related to number portability. Shared costs are those costs incurred on behalf of the industry as a whole, such as the costs of the regional database administrator to build, operate, and maintain the databases needed to provide number portability. The *Third Report and Order* concludes that all telecommunications carriers with end-user revenues are required to pay an allocated portion of the shared costs incurred by the regional database administrator in proportion to that carrier's international, interstate, and intrastate end-user telecommunications revenues for the region. While carriers already track their sales to end-users for billing purposes, they will need to identify their regional end-user revenues. That information, along with periodic updates, must be provided to the regional database administrator for the appropriate allocation of shared costs. The *Third Report and Order* also requires incumbent LECs to maintain records that detail both the nature and specific amount of those carrier-specific costs that are directly related to number portability, and those carrier-specific costs that are not directly related to number portability. The *Third Report and Order* requires incumbent LECs that choose to recover their carrier-specific costs directly related to providing number portability to use federally-tariffed end-user charges. These information collection requirements are contingent upon approval of the Office of Management and Budget (OMB).

VIII. Ordering Clauses

65. Accordingly, it is ordered that pursuant to authority contained in sections 1, 2, 4(i), 201–205, 215, 251(b)(2), 251(e)(2), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201–205, 215, 251(b)(2), 251(e)(2), and 332, Part 52 of the Commission's rules is amended as set forth.

66. It is further ordered that the policies, rules and requirements set forth herein are adopted.

67. It is further ordered that the policies, rules and requirements adopted herein shall be effective on July 29, 1998, except for §§ 52.32(b) and 52.33(a)(1), which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

68. It is further ordered that the Commission's Office of Public Affairs, References Operations Division, shall send a copy of this Third Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

69. It is further ordered that incumbent local exchange carriers may file tariffs to take effect no earlier than February 1, 1999, setting out the monthly number portability charge they intend to collect from their end users, in accordance with this Order.

70. It is further ordered that pursuant to authority contained in section 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c)(1), the Chief, Common Carrier Bureau, is delegated authority to determine appropriate methods for apportioning joint costs among portability and nonportability services, and to issue any orders to provide guidance to incumbent LECs before they file their tariffs, which are to take effect no earlier than February 1, 1999. To facilitate determination of the portion of joint costs carriers shall treat as carrier-specific costs directly related to providing number portability, and to facilitate evaluation of the cost support that carriers will file in their federal tariffs, carriers and interested parties may file comments by August 3, 1998 proposing ways to apportion the different types of joint costs. Carriers and interested parties may file reply comments by September 16, 1998.

List of Subjects in 47 CFR Part 52

Carrier-specific costs, Communications common carriers, Long-term number portability cost recovery, Number portability, Regional databases, Shared costs.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Accordingly, part 52 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 52—NUMBERING

1. The authority for part 52 continues to read as follows:

Authority: Sec. 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. § 151, 152, 154, 155, 251 unless otherwise noted. Interpret or apply secs. 3, 4, 201–05, 207–09, 218, 225–27, 251–52, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–05, 207–09, 218, 225–27, 251–52, 271 and 332 unless otherwise noted.

2. Add § 52.32 to read as follows:

§ 52.32 Allocation of the shared costs of long-term number portability

(a) The local number portability administrator, as defined in § 52.21(h), of each regional database, as defined in § 52.21(1), shall recover the shared costs of long-term number portability attributable to that regional database from all telecommunications carriers providing telecommunications service in areas that regional database serves. Pursuant to its duties under § 52.26, the local number portability administrator shall collect sufficient revenues to fund the operation of the regional database by:

(1) Assessing a $100 yearly contribution on each telecommunications carrier identified in paragraph (a) introductory text that has no intrastate, interstate, or international end-user telecommunications revenue derived from providing telecommunications service in the areas that regional database serves, and

(2) Assessing on each of the other telecommunications carriers providing telecommunications service in areas that regional database serves, a charge that recovers the remaining shared costs of long-term number portability attributable to that regional database in proportion to the ratio of:

(i) The sum of the intrastate, interstate, and international end-user

telecommunications revenues that such telecommunications carrier derives from providing telecommunications service in the areas that regional database serves, ii) to the sum of the intrastate, interstate, and international end-user telecommunications revenues that all telecommunications carriers derive from providing telecommunications service in the areas that regional database serves.

(b) The local number portability administrator for a particular regional database may require the telecommunications carriers providing telecommunications service in the areas served by the regional database to provide once a year that data necessary to calculate, pursuant to paragraph (a)(1) or (a)(2) of this section, those carriers' portions of the shared costs of long-term number portability attributable to that regional database. All such telecommunications carriers shall comply with any such requests.

(c) Once a telecommunications carrier has been allocated, pursuant to paragraph (a)(1) or (a)(2) of this section, its portion of the shared costs of long-term number portability attributable to a regional database, the carrier shall treat that portion as a carrier-specific cost directly related to providing number portability.

3. Add § 52.33 to read as follows:

§ 52.33 Recovery of carrier-specific costs directly related to providing long-term number portability.

(a) Incumbent local exchange carriers may recover their carrier-specific costs directly related to providing long-term number portability by establishing in tariffs filed with the Federal Communications Commission a monthly number-portability charge, as specified in paragraph (a)(1), and a number portability query-service charge, as specified in paragraph (a)(2).

(1) The monthly number-portability charge may take effect no earlier than February 1, 1999, on a date the incumbent local exchange carrier selects, and may end no later than five years after that date.

(i) An incumbent local exchange carrier may assess each end user it serves in the 100 largest metropolitan statistical areas, and each end user it serves from a number-portability-capable switch outside the 100 largest metropolitan statistical areas, one monthly number-portability charge per line except that:

(A) One PBX trunk shall receive nine monthly number-portability charges.

(B) One PRI ISDN line shall receive five monthly number-portability charges.

(C) Lifeline Assistance Program customers shall not receive the monthly number-portability charge.

(ii) An incumbent local exchange carrier may assess on carriers that purchase the incumbent local exchange carrier's switching ports as unbundled network elements under section 251 of the Communications Act, and resellers of the incumbent local exchange carrier's local service, the same charges as described in paragraph (a)(1)(A) of this section, as if the incumbent local exchange carrier were serving those carriers' end users.

(iii) An incumbent local exchange carrier may not assess a monthly number-portability charge for local loops carriers purchase as unbundled network elements under section 251.

(iv) The incumbent local exchange carrier shall levelize the monthly number-portability charge over five years by setting a rate for the charge at which the present value of the revenue recovered by the charge does not exceed the present value of the cost being recovered, using a discount rate equal to the rate of return on investment which the Commission has prescribed for interstate access services pursuant to Part 65 of the Commission's Rules.

(2) The number portability query-service charge may recover only carrier-specific costs directly related to providing long-term number portability that the incumbent local exchange carrier incurs to provide long-term number portability query service to carriers on a prearranged and default basis.

(b) All telecommunications carriers other than incumbent local exchange carriers may recover their number portability costs in any manner consistent with applicable state and federal laws and regulations.

[FR Doc. 98–17076 Filed 6–26–98; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 061898D]

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Catch limit adjustment.

SUMMARY: NMFS adjusts the daily catch limit for the Angling category fishery for Atlantic bluefin tuna (BFT) in the southern area (Delaware and states south) to one fish per angler, with a maximum of three fish per vessel, from the school size class and one fish per vessel from the large school or small medium size class. The duration of the catch limit adjustment is limited to the period of June 26 through July 27, 1998, whereupon the limit will revert to one BFT from the school, large school, or small medium size class per vessel per day. This action is being taken to provide increased fishing opportunities in the southern area without risking overharvest of this category.

DATES: The daily catch limit adjustment is effective 1:00 a.m., local time, June 26, 1998, until 11:30 p.m., local time, July 27, 1998.

FOR FURTHER INFORMATION CONTACT: Pat Scida, 978–281–9260, or Sarah McLaughlin, 301–713–2347.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285.

Implementing regulations for the Atlantic tuna fisheries at § 285.24 allow for adjustments to the daily catch limits in order to provide for maximum utilization of the quota spread over the longest possible period of time. The Assistant Administrator for Fisheries, NOAA, may increase or reduce the per angler catch limit for any size class BFT or may change the per angler limit to a per boat limit or a per boat limit to a per angler limit.

NMFS is responsible for implementing the International Commission for the Conservation of Atlantic Tunas recommendation to limit the annual catch of school bluefin to 8 percent by weight of the total annual domestic quota, i.e., 1,344 metric tons (mt). In addition, it is NMFS' goal to increase the geographical and temporal distribution of data collection and fishing opportunities for all fishermen in the Angling category.

Since January 1, 1998, NMFS has maintained the daily catch limit at one BFT per vessel to ensure that the southern area quota would not be exceeded and to provide increased fishing opportunities throughout the southern area. Preliminary estimates of southern area landings for January through May 1998 indicate that no more than 5 mt of school BFT (subquota of 51 mt), no more than 10 mt of large school/small medium BFT (subquota of 72 mt),