

KELLOGG, HUBER, HANSEN, TODD, EVANS & FIGEL, P.L.L.C.

SUMNER SQUARE  
1615 M STREET, N.W.  
SUITE 400  
WASHINGTON, D.C. 20036-3209

(202) 326-7900

FACSIMILE:  
(202) 326-7999

September 23, 2014

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room TW-A325  
Washington, D.C. 20554

*Electronically Filed*

Re: CC Docket No. 95-116; WC Docket No. 09-109

Dear Ms. Dortch:

I write on behalf of Neustar, Inc., to address various assertions in the Reply Comments filed by Ericsson's wholly owned subsidiary, Telcordia Technologies, Inc., d/b/a iconectiv,<sup>1</sup> in response to the Public Notice in this proceeding. As Neustar has explained, the Commission is legally required to issue a notice of proposed rulemaking ("NPRM"). Furthermore, given the factual, legal, and policy questions now before the agency, a rulemaking proceeding is needed to ensure that the Commission has an adequate record for decision.

In urging the Commission to short-circuit the rulemaking procedures required for designation of an impartial local number portability administrator ("LNPA"), and in attempting to defend an unjustifiable NANC recommendation and the flawed process leading up to it, Ericsson mischaracterizes the record and misstates important facts. Ericsson dismisses critical LNPA requirements as details to be addressed after the fact, underscoring the significant gaps in its proposal. Those gaps – along with the NANC's conclusory recommendation – demand the

---

<sup>1</sup> Telcordia Technologies Inc., d/b/a iconectiv, is part of Ericsson, and unless otherwise noted will be referred to here by the name of the corporate parent.

Ms. Dortch  
September 23, 2014  
Page 2

Commission's searching review of Ericsson's inadequate proposal and the NANC's recommendation as required by law.

- Ericsson's Reply, like its proposal, fails adequately to address critical issues – including neutrality, transition planning, technology transition, law enforcement, public safety, and national security – and it offers to rectify them only after vendor selection. Its approach is contrary to sound procurement practices and basic fairness. If one bidder is permitted to make substantive changes to its proposal, *all* bidders must be given a fair opportunity to continue to compete as well. Such an opportunity is particularly important given that the NAPM denied Neustar's October 2014 request that all bidders be able to participate in an additional round of bidding.
- Claims that Neustar waived its objections to the RFP and to the prosecution of the RFP process to date are incorrect. To our knowledge, both are now before the Commission for the first time. To the extent that the Commission "approved" changes in the RFP, as Ericsson suggests, any such action did not take place in the light of day or in accordance with the requirements of the Administrative Procedure Act. The Bureau's role in the decisions to extend the April deadline for submission of proposals and to cut off competition prematurely were similar shrouded in secrecy and are only now before the Commission.
- Ericsson's Reply confirms that national security concerns raised by its proposal are substantial; they cannot be addressed in *ad hoc* after-the-fact negotiations. Ericsson may prefer to preserve the NANC's recommendation so that it can reduce security considerations to a checklist at which it can chip away or meet with minimal solutions. That approach would not serve the interest of law enforcement, the national security agencies, the Commission, or the public.
- Ericsson's arguments do not cure the wholly conclusory nature of the NANC's recommendation. The absence of evidentiary support for that recommendation deprives the Commission of any lawful basis for making a selection decision in favor of Ericsson and underscores the need for a rulemaking proceeding.
- Ericsson's Reply admits that transition will impose substantial costs on NPAC users. Its expert acknowledges that even if the transition is flawless, which it certainly will not be, service providers could be faced with pre-transition costs of up to \$1.5 million each, even though 80% of NPAC users spend less than \$1,000 per month on NPAC services.
- Ericsson has an obligation to show that the corporate parent, its wholly owned subsidiary, Telcordia, and its chosen subcontractor, SunGard, are impartial under Section 251(e) of the Communications Act and neutral under the Commission's rules and the terms of the RFP. It did not do so. Furthermore, Ericsson's proposed

Ms. Dortch  
 September 23, 2014  
 Page 3

safeguards fail to meet the FCC’s mandates as set out in prior orders. The Commission cannot change its neutrality standard without rulemaking, and any decision to change those requirements without notice and after the competition is closed would fly in the face of the Commission’s prior interpretation of those rules for over a decade.

- Ericsson’s claim that the Commission can designate the LNPA by adjudication is simply wrong: a selection decision does not involve the application of existing legal norms; the selection does not resolve any dispute between private parties; and the Commission previously designated the LNPA and established baseline neutrality requirements through a rulemaking.
- Ericsson’s Reply confirms that the April extension of the bidding deadline was indefensible, particularly in light of later [BEGIN CONFIDENTIAL INFORMATION] [REDACTED] [END CONFIDENTIAL INFORMATION]

**1. Ericsson’s Deficient Proposal Cannot Be Rectified After the Fact.** Ericsson argues that various critical issues central to the administration of number portability – including those related to neutrality, development of a detailed transition plan, the TDM-to-IP transition, and the needs of national security and law enforcement – can all be addressed after the selection is made, during the process of negotiating a contract (how this will be done and with whom it would negotiate is not specified).

Ericsson’s argument that the Commission can award it the LNPA contract despite the gaps in its proposal, only to address law enforcement, national security, IP transition, neutrality and other matters after the fact is contrary to contracting principles and basic fairness. Federal procurement principles – [BEGIN CONFIDENTIAL INFORMATION] [REDACTED] [END CONFIDENTIAL INFORMATION] require that an agency may not award a contract and then make material changes to the requirements of the original solicitation. The substantial modifications proposed are not “matters of contract administration” and thus cannot be made post-award.<sup>2</sup> Likewise, issues that go to the heart of whether a proposal complies with the

---

<sup>2</sup> See *Northrop Grumman Corp. v. United States*, 50 Fed. Cl. 443, 466 (2001) (“When the government knows it will have to modify the specific language and requirements of a contract before the award is made, or when the government simply fails to consider stated requirements in a contract so that changes will be inevitable after award, such changes will be held outside the scope of the competition and the contract will be considered void *ab initio*.”); *Vinculum Solutions, Inc.*, B-408337, B-408337.2, 2013 CPD ¶ 191, 2013 WL 3989254, at \*2 (Comp. Gen. Aug. 5, 2013,) (noting that “an agency may not award a contract or task order with the intent to materially alter it after award”); *NV Servs.*, B-284119.2, 2000 CPD ¶ 64, 2000 WL 350269

Ms. Dortch  
 September 23, 2014  
 Page 4

requirements of the RFP cannot be addressed post-award.<sup>3</sup> The fact that the LNPA selection process is not subject to federal procurement regulations does not absolve the Commission of its obligations to ensure due process and to act in a fair and transparent manner.

Moreover, it would not be permissible to allow Ericsson to modify its proposal without providing Neustar the opportunity to submit an improved proposal. In federal procurement law, minor “clarifications” about non-material aspects of a proposal are permissible, but “discussions” that result in a material revision to a proposal are prohibited. The security revisions contained in Ericsson’s Reply Comments, for example, are not mere “clarifications.” *See infra* pp.6-9. Given the importance of security to proper administration of the LNPA, the late changes submitted by Ericsson go to the heart of whether its proposal can be deemed acceptable.<sup>4</sup>

Allowing Ericsson to “fix” its proposal without allowing Neustar to make any revisions to its proposal would be arbitrary and capricious. In the analogous case of federal procurements, agencies are not permitted to accept a material revision to one offeror’s proposal, without affording an equal opportunity to all offerors.<sup>5</sup> Just as it is arbitrary and capricious for an agency

---

(Comp. Gen. Feb. 25, 2000) (explaining that a post-award modification that would have affected the competitive positions of the offerors was improper).

<sup>3</sup> *See Centech Grp., Inc. v. United States*, 79 Fed. Cl. 562 (2007) (finding that an awardee’s failure to comply with a clause in the solicitation could not be rectified after award, and, therefore, its offer was unacceptable); *Tri-State Government Servs., Inc.*, B-277315, B-277315.2, 97-2 CPD ¶ 143, 1997 WL 709309, at \*3 (Comp. Gen. Oct. 15, 1997) (noting that “an irregularity in an offer results in benefits to an offeror not extended to all offerors by the solicitation, and is prejudicial to other offerors, the offer is unacceptable”).

<sup>4</sup> *Priority One Servs., Inc.*, B-288836, B-288836.2, 2002 CPD ¶ 79, 2001 WL 1872433 (Comp. Gen. Dec. 17, 2001) (agency’s communications after submission of final proposal revisions with one offeror constituted discussions where the agency required the offeror to replace unacceptable personnel and solicited other proposal revisions from that offeror); *Lockheed Martin Simulation, Training & Support*, B-292836.8 *et al.*, 2005 CPD ¶ 27, 2004 WL 3217797, at \*6 (Comp. Gen. Nov. 24, 2004) (“[W]here there is a dispute regarding whether communications between an agency and an offeror constituted discussions, the acid test is whether an offeror has been afforded an opportunity to revise or modify its proposal.”); *CIGNA Government Servs., LLC*, B-297915.2, 2006 CPD ¶ 74, 2006 WL 1328858, at \*5 (Comp. Gen. May 4, 2006) (“Communications between a procuring agency and an offeror that permit the offeror to materially revise or modify its proposal generally constitute discussions. . . . If an agency does conduct discussions with one offeror, it must . . . provide all such offerors an opportunity to submit revised proposals.”).

<sup>5</sup> *See CIGNA Government Servs.*, 2006 WL 1328858, at \*5; *Dubinsky v. United States*, 43 Fed. Cl. 243, 262 (1999) (agency decision to allow one offeror the opportunity to make proposal technically acceptable, without allowing other offerors the opportunity to revise proposals, was

Ms. Dortch  
September 23, 2014  
Page 5

to allow only one offeror to revise its proposal *ex parte* when buying supplies and services, it is improper for the Commission to do so when making such an important selection as the nation's LNPA.

Furthermore, even setting principles of contracting law aside, Ericsson is wrong to argue that the Commission can overlook the flaws in its proposal and approve the selection recommendation in the hope that the problems will be addressed later. To the contrary, because (as Ericsson concedes) the NANC's recommendation is just that – a recommendation – the Commission must ensure that the selection of the next LNPA is consistent with the public interest by assessing the significant costs and risks associated with any proposal, and by whom those costs and risks are borne. As discussed further below, even according to Ericsson's commissioned studies, the costs and risks are potentially enormous, and the failure of both the NAPM and the NANC properly to address them in their recommendations puts the question squarely in front of the Commission.

Ericsson's repeated suggestion that Neustar has waived *any* of its objections to the NANC's recommendation ignores the fact that the Commission determined that evaluation of the recommendation and selection of the LNPA would be a matter for the Commission.<sup>6</sup> The failure to evaluate or establish requirements for the national security aspects of the proposals, for example, was the NANC/NAPM's failure, not Neustar's. That failure does not make it any less

---

improper and prejudicial); *Computer Sciences Corp.*, B-298494.2 *et al.*, 2007 CPD ¶ 103, 2007 WL 1732285 (Comp. Gen. May 10, 2007) (finding unreasonable agency's decision to allow several offerors the opportunity to revise subcontracting plans without allowing other offerors the same opportunity). The Comptroller General has ruled that proposal revisions, even when styled as mere "comments" to an evaluation, are improper unless all offerors are provided a similar opportunity. *See International Res. Grp.*, B-288836, 2001 CPD ¶ 35, 2001 WL 206074, at \*2 (Comp. Gen. Jan. 31, 2001). If a technically unacceptable proposal can only be made acceptable through further communications with an offeror, and the agency chooses not to give other offerors the same opportunity, the only proper agency action is to reject the technically unacceptable proposal. *See 4D Sec. Solutions, Inc.*, B-400351.2, 2009 CPD ¶ 5, 2008 WL 5505408, at \*4 (Comp. Gen. Dec. 8, 2008).

<sup>6</sup> The Bureau decision and one appellate case on which Ericsson relies suggest nothing to the contrary. The decision of the Bureau (not, as Ericsson claims, the Commission) that a petition waived a constitutional objection to a Commission rule by failing to raise it during the rulemaking proceeding is beside the point: Neustar's comments are timely because the Commission has not adopted any rule. On the contrary, the purpose of the proceeding is to make the designation decision that is the subject of Neustar's arguments. And *Blue & Gold Fleet, L.P. v. United States*, 492 F.3d 1308, 1315 (Fed. Cir. 2007), deals with the obligation of a bidder on a government contract to raise an objection to a patent ambiguity in a solicitation document; it has no application to Neustar's objections.

Ms. Dortch  
September 23, 2014  
Page 6

necessary for the Commission to evaluate and establish those requirements now. It is likewise plain that, to the extent the RFP and Ericsson's proposal fail to address those issues fully, the Commission can and must seek additional data so it can make an informed evaluation.

Bizarrely, Ericsson faults Neustar for failing to “petition[] for reconsideration or file[] an[] application for review of any Bureau decision with respect to (i) the Bureau's authority to select the LNPA, (ii) the structure of the procurement process, (iii) the contents of the RFP, or (iv) Bureau consent to changes in the time for the submission of initial bids.”<sup>7</sup> The claim is bizarre because the Bureau has never claimed authority to select the LNPA (to the contrary, as Ericsson itself admits, that is authority that the Commission has never delegated); the Bureau issued no order approving the contents of the RFP; and there was never any announcement by the Bureau that it “consent[ed] to changes in the time for the submission of initial bids.” On the contrary, if the Bureau “consented” to such a change in undisclosed communications with Ericsson, the NAPM, or other private parties to Neustar's prejudice and without ever announcing its decision, such action would be flatly unlawful. Neustar's objection is to unlawful actions occurring in the course of this process, to the potential unlawful designation of an LNPA and changes in neutrality requirements without notice-and-comment rulemaking, and to the impropriety of the Commission adopting a NANC recommendation that provides no evidence to support its conclusions.<sup>8</sup> Neustar waived none of these objections, which are timely presented now.

**2. Ericsson's Reply Fails To Resolve National Security Concerns.** In its Reply Comments, Ericsson for the first time addresses national security issues substantively. Faced with extensive comments filed by both federal law enforcement agencies and Neustar, even Ericsson finds itself unable to dismiss the concerns. Instead, it makes a host of brand-new security claims. But Reply Comments are not the place to modify an RFP response or to compete on security.

Even in this belated submission, Ericsson's security assurances are fatally lacking in specificity. Ericsson offers only the vague promise that it is “ready, willing, and able” to address additional protections.<sup>9</sup> It refuses to address the specific concerns raised by federal law enforcement agencies. Instead, Ericsson simply says that the solution is for it to negotiate

---

<sup>7</sup> Ericsson Reply Comments at 67 (errata submitted Sept. 3, 2014).

<sup>8</sup> Neustar raised concerns about various aspects of the RFP procedure at the time certain events occurred, but the Commission did not disclose (and still has not disclosed) the actions it took during the process and what the legal basis was for any decision regarding the RFP process made behind closed doors.

<sup>9</sup> See Ericsson Reply Comments at 139. In contrast, Neustar made clear its readiness to continue bidding prior to the adoption of a NANC recommendation, which Ericsson vigorously opposed.

Ms. Dortch  
September 23, 2014  
Page 7

“reasonable assurances.”<sup>10</sup> But exactly what assurances it intends to offer, who will be part of the negotiations, how any obligations will be enforced, and the timing of such negotiations are not addressed. Ericsson tacitly concedes, however, that its proposal does not adequately address national security. Its attempt to put off serious consideration of security issues by offering ambiguous assurances to unidentified parties at some unspecified future time is unavailing.

To date, the Commission has relied on the RFP process to set requirements for LNPA candidates and to enforce those requirements, letting the candidates compete to show that they can meet the requirements better than anyone else. Now, however, Ericsson wants some of the most important requirements to be negotiated on an *ad hoc* basis after the fact. Ericsson presumably hopes that such an approach will permit the recommendation to go forward, even without any foundation upon which the Commission can rely.

The Commission should not accept this last-minute improvisation. Ericsson’s *ad hoc* approach is bad for security in many ways. If stuck with a proposal that omits necessary security requirements, law enforcement agencies will presumably find that Ericsson has every incentive to reject or slow-roll expensive security commitments, no matter how necessary. Ericsson has no incentive to identify the specific security risks facing an LNPA and to address them. Instead, it has every incentive to turn security into a checklist exercise by requiring that the government identify all its security requirements and then to chip away at the list in *ad hoc* negotiations, doing the minimum necessary on each checklist item. That is no way to protect the national security interests of the United States. Moreover, Ericsson wants its new security commitments evaluated without any competition from Neustar. In short, it leaves the Commission in an untenable position: the record before it does not begin to provide an adequate basis on which to make its final decision.

Ericsson’s Reply Comments show the dramatic difference between competing to provide better security and jockeying to knock security items off a checklist. (These points are covered in more detail in Neustar’s security-redacted response to Ericsson’s Reply Comments, so we will only touch on them generally in this submission.)

For example, having belatedly recognized its mistake in using the same code it employs in foreign countries, Ericsson now says – for the first time, in its Reply Comments – that its code “is being developed from scratch in America.” This statement cannot be found in Ericsson’s earlier submissions; the change is intended to address the security concern of unauthorized foreign access. But Ericsson’s new proposal raises new security and reliability issues. Writing code from scratch also means writing new bugs. It adds to the risk of failures and outages, something even Ericsson’s own transition cost witness was obliged to recognize.<sup>11</sup> These are

---

<sup>10</sup> See *id.* at 124, 139.

<sup>11</sup> “If a new NPAC operator were to write all-new code from scratch, there is a distinct likelihood of latent errors to be found post-release.” Eric Burger, *Issues and Analysis of a*

Ms. Dortch  
September 23, 2014  
Page 8

things that any evaluator charged with ensuring a bidder's technical sufficiency and reliability, as well as its ability to provide a safe transition, would want to assess. [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[REDACTED]

[END HIGHLY CONFIDENTIAL INFORMATION]

To cite another example, [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[REDACTED]

[END HIGHLY CONFIDENTIAL INFORMATION]

Finally, the laundry list of security tools and assurances offered by Ericsson in its Reply Comments is sketched only at a very general level, and its assurances are unenforceable. When it says its code will be written "from scratch" and "in America," for example, Ericsson is not using terms of art suitable for a binding contract. It would be unfair to allow Ericsson's security to be judged in the absence of competition, on these new, loosely defined capabilities and promises. Yet, any effort to pin Ericsson down is likely to raise more questions about whether the company can deliver those capabilities at its proposed price. The risk is great that Ericsson either intends to treat additional security features as its first "change order," for which it will charge much more, or to implement them half-heartedly, citing cost factors.

Ericsson's Reply Comments epitomize the inherent risks of trying to patch together a security framework after the fact. Instead, there needs to be a forward-looking assessment of the security risks of the LNPA, which is used to inform the security framework that is necessary and to evaluate the relative security qualifications of the candidates. To our knowledge, no U.S. Government law enforcement or security agency has performed such a security risk assessment

---

*Provider Transition for the NPAC, S<sup>2</sup>ERC Technical Report (July 22, 2014) at 11 (attached as Exhibit B to Ericsson Reply Comments) ("Burger Report").* Moreover, to the extent Ericsson does write new code, the Commission must evaluate this risk and reflect its adverse consequences in the appraisal of the technical merit of Ericsson's proposal.

<sup>12</sup> Compare Ericsson Reply Comments at 10, 130-31, 135, with TRD Detailed Response § 7.7 at Telcordia08112. See also Neustar Reply Comments at 66-67.

Ms. Dortch  
September 23, 2014  
Page 9

to date. Security best practices, including the NIST Framework *and* the CFIUS review process, call for a comprehensive risk assessment to take place *first*, before deciding what measures or mitigations to require and have implemented.

The overall process should also provide answers to questions regarding how the Executive Branch will provide its views, how the Commission and candidates will respond to those concerns, and how the agencies will then confirm that its concerns have been satisfied. The comments filed by the Law Enforcement Agencies play an important part. Views of other agencies, with other responsibilities, such as emergency communications and response, supply chain security, and protection of critical infrastructure, must also be taken into account. This well defined and comprehensive process is integral to ensuring that security concerns are adequately addressed. Therefore, the Commission must either include in an additional round of bidding all of the requirements upon which bidders are to compete or disqualify Ericsson for failing to include in its proposal how it will meet national security concerns.

**3. The Commission Cannot Rely on the NANC Recommendation.** The Recommendation does not address numerous critical aspects necessary for a thorough comparative evaluation of the competing proposals. Many elements that warrant industry attention and are critical to a potential transition also are absent from Ericsson’s proposal. Both Ericsson and the NAPM try to defend the Recommendation in their reply comments, but their arguments are not responsive to the obligations they are required to meet in this proceeding.

As an initial matter, neither Ericsson nor the NAPM disputes that the Recommendation is largely devoid of detail supporting its conclusion. To the contrary, both parties argue that, because the Recommendation was reached through a robust (albeit undocumented) process, its findings should be respected. Ericsson claims (at 90-91) that the Recommendation “appropriately considered transition costs,” quoting the FoNPAC’s statement that it **[BEGIN HIGHLY CONFIDENTIAL]**



**[END HIGHLY CONFIDENTIAL]** Similarly, the NAPM argues that the Recommendation found that “both bidders met the technical qualifications and are equally capable of serving as the LNPA for each of the seven regional databases” after it “thoroughly analyzed, debated, and scored bidders with respect to all relevant capabilities.”<sup>13</sup> But neither Ericsson nor the NAPM is able to point to any evidence of this supposedly thorough analysis in the Recommendation itself, making it impossible to discern the existence of a process by which the NAPM assessed the technical and management criteria and weighed them against the economic factors of price and transition cost. In fact, the NAPM argues “the lack of formal analysis does not indicate that there was any

---

<sup>13</sup> Reply Comments of the NAPM LLC at 3-4.

Ms. Dortch  
 September 23, 2014  
 Page 10

deficiency in the analysis underlying the NANC recommendation.”<sup>14</sup> But that is exactly what it means. It is necessary that the final recommendation contain sufficient supporting detail to support its conclusions, so that the Commission can independently determine whether a valid determination was made.

Ericsson next argues that it was unnecessary for the Recommendation to include substantive support for its assertion that Ericsson and Neustar scored similarly with respect to technical and management criteria, because [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL] As Neustar has explained, this argument fails for several reasons: it is unreasonable to assume the results of such a calculation when no quantification of the transition costs and risks have been performed; it improperly elevates price above other factors that were to be given greater weight according to the rules of the RFP; and it ignores the fact that the costs and risks of the transition will not be uniformly borne by all industry stakeholders – a result that is at odds with the pro-competitive mandate of the 1996 Act.

The Recommendation’s failure to substantiate its conclusions is not merely a process flaw; it goes to the heart of the Recommendation’s legitimacy as a basis for the Commission’s final decision. The Commission must, of course, reach a decision in conformity with the fundamental requirements that its actions be supported by substantial evidence and not be arbitrary, capricious, or not in accordance with law.<sup>15</sup> Neither Ericsson nor the NAPM addresses the numerous concerns raised by commenters regarding the technical, operational, and cost consequences of the proposed LNPA transition.

First, the Recommendation fails to consider the transition of key LNPA services relied on by non-carrier users of the NPAC, particularly national security, law enforcement, and commercial regulatory compliance (maintaining the accuracy of do-not-call registries). The users of these services, which include the LNP Enhanced Analytical Platform (LEAP) and Intermodal Ported TN Service (IPTN), have no representation on the NAPM or the NANC, and there is no record of any consultation with these parties during the RFP process. Moreover, Ericsson’s transition plan [BEGIN HIGHLY CONFIDENTIAL] [REDACTED] [END HIGHLY CONFIDENTIAL] Thus, it does not appear that any attempt has been made to guarantee that equivalent functionality would be provided after the proposed transition, or that the transition would not cause undue disruption. This oversight creates significant potential risks to, at a minimum, critical public safety and national security services that the Commission must now independently address.

---

<sup>14</sup> *Id.* at 4.

<sup>15</sup> *See* 5 U.S.C. § 706; *see also* *Motor Vehicles Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42-43 (1983).



Ms. Dortch  
 September 23, 2014  
 Page 12

Administration System to ensure proper call routing and *internal* NPAC business procedures that rely upon access to the Pooling Administrator – has also had the benefit of internal proximity between the two services, making for easy resolution of issues prior to any service provider exposure to them. Having the two contracts run by two separate companies will create the need for new inter-company procedures, *and* additional pre-cutover testing different from any that service providers currently perform prior to new NPAC releases. Although Neustar is ready to work with Ericsson on these critical issues should it be selected, the fact that Ericsson’s transition plan does not address them highlights its lack of understanding of the full breadth of NPAC functions, and the significant amount of learning still required regarding the costs and risks of an NPAC transition.

Fourth, the Recommendation ignores the challenges associated with transferring responsibilities between LNPAs, including, for example, data migration. As Neustar has explained, the transition will require the migration of a massive amount of data from Neustar to Ericsson. How this data migration will be accomplished has not been adequately explained. Ericsson’s plan states that it [BEGIN HIGHLY CONFIDENTIAL]

[REDACTED]

[END HIGHLY CONFIDENTIAL] Thus, here too, notwithstanding Neustar’s willingness to work with Ericsson on a potential transition, the key details for transition are far from settled, posing a risk of substantial service degradation with respect to core NPAC functionality.

**4. Ericsson’s Reply Underscores that Transition Costs and Risks Have Not Been Adequately Considered.** Because it cannot defend the flaws of its proposal or the Recommendation’s failure to consider the transition in sufficient detail, Ericsson seeks in its reply comments to downplay transition costs and risks. It submits a report by Dr. Eric Burger, a computer science professor at Georgetown University, which concludes that the NPAC transition is of “modest complexity” and “relatively low risk.” Ericsson also submits a two-and-a-half page report from Deloitte Consulting LLP, which concludes that “adequate documentation appears to be available” to place transition within acceptable risk limits. Both reports suffer from a number of shortcomings and do not provide a basis for the Commission to overlook the failure of the Recommendation to consider adequately the transition costs or risks, or the deficiencies in Ericsson’s transition plan.

Most important, the Burger and Deloitte reports actually concede that the transition could involve significant risks and costs. For example, the Burger Report notes (at 11) that the transition poses “risk from the implementation of the business rules,” including “a distinct likelihood of latent errors” if “a new NPAC operator were to write all-new code from scratch,”

---

<sup>19</sup> *Id.* § 12.3.2.4.1 at Telcordia00155.

Ms. Dortch  
 September 23, 2014  
 Page 13

as Ericsson has indicated is the case here.<sup>20</sup> The Burger Report also states that “[t]he largest risk of transition falls on the carrier,” that “[e]xecuting the transition will force carriers to execute enterprise IT projects,” and that “[p]rojects of this scale run from \$250,000 to \$1,500,000 per carrier, depending on the complexity of the carrier’s installed system.” The Burger Report concludes (at 13) that “a realistic cost estimate to industry for the transition would be somewhere between \$21MM and \$160MM.” Significantly, this assumes a largely successful implementation, and that errors encountered post-transition would be *de minimis*.

Dr. Burger’s estimate – which largely confirms previous analysis performed by the Standish Group and Economists Incorporated – represents Ericsson’s view of potential *pre-transition* costs only. In a separately filed “Analysis of Technical Report by Professor Burger,” Dr. Hal J. Singer of Economists Incorporated, finds:

The absence of any quantification of post-transition costs in his report should not be interpreted as a zero estimate. Indeed, much of the logic in Professor Burger’s report suggests those costs could be substantial. Thus, any comparison of the *sum* of my pre-transition and post-transition costs with Professor Burger’s standalone pre-transition costs, as some would have the Commission do, is the quintessential apples-to-oranges mistake. Replacing my estimated setup and testing costs with Professor Burger’s estimate would *increase* the total cost of the transition to over \$800 million.<sup>21</sup>

Deloitte Consulting likewise acknowledges that “a failed implementation of a new LNP administrator would have far-reaching consequences to the industry.” In other words, failures in testing or implementation could result in significant cost overruns and consumer service disruption.<sup>22</sup> This possibility also was not considered in the Recommendation.

Thus, both the Burger and Deloitte reports acknowledge that the transition will impose significant costs on carriers – costs that many of these carriers are likely never to recover. As Neustar has explained, approximately 80% of carriers that use the NPAC pay less than \$1,000

---

<sup>20</sup> See, e.g., Ellen Nakashima, *Neustar, Telcordia Battle Over FCC Contract To Play Traffic Cop for Phone Calls, Texts*, Wash. Post, Aug. 9, 2014, [http://www.washingtonpost.com/world/national-security/neustar-telcordia-battle-over-fcc-contract-to-play-traffic-cop-for-phone-calls-texts/2014/08/09/778edea-1e7b-11e4-ae54-0cfe1f974f8a\\_story.html](http://www.washingtonpost.com/world/national-security/neustar-telcordia-battle-over-fcc-contract-to-play-traffic-cop-for-phone-calls-texts/2014/08/09/778edea-1e7b-11e4-ae54-0cfe1f974f8a_story.html) (“We are not using any of the code used and deployed in foreign installations at all, zero,” said Chris Drake, chief technology officer at iconectiv, the Telcordia unit that handles number portability systems.).

<sup>21</sup> Hal J. Singer, Ph.D., *Analysis of Technical Report by Professor Burger* at 2.

<sup>22</sup> See Report of Deloitte Consulting, LLP at 3 (Aug. 8, 2014) (attached as Exhibit C to Ericsson Reply Comments) (“Deloitte Report”).

Ms. Dortch  
 September 23, 2014  
 Page 14

per month in fees. For these carriers, even using the estimate of the Burger Report, the payback period for near-term costs could be more than 20 years. Moreover, this quantification of significant costs did not factor in at all to the Recommendation or to Ericsson's proposal, highlighting the deficiencies of both.

The Burger and Deloitte reports reflect numerous flawed assumptions, and do not provide a basis for the Commission to conclude that the transition poses only minimal risks and costs. To conclude that the transition poses only modest risk, the reports assume that (a) NPAC functionality is largely static (contradicted by both the NPAC's recent change management history and the future flexibility required by the RFP); (b) the NPAC requirements are documented to such a specific degree that no data migration is necessary (contradicted by Ericsson's own statements on the record); and (c) that transition risk can be accurately estimated based on experience with incremental change orders from more than ten years ago. None of these assumptions is realistic. As a result, the conclusions of the Burger and Deloitte reports fail to assess the costs and risks of the transition.

**5. Ericsson Must Comply with the FCC's Neutrality Precedent.** Ericsson's insistence that the Commission refrain from evaluating its neutrality<sup>23</sup> – far from providing any assurance – warrants increased scrutiny by the Commission and heightens the concern of affected service providers.<sup>24</sup> Ericsson wrongly interprets the Commission's neutrality precedent to foreclose an evaluation of its affiliations or relationships with telecommunications service providers ("TSPs").<sup>25</sup> Both the *NANP Third Report and Order* and the *Warburg Transfer Order* establish that the neutrality inquiry includes an evaluation at the parent corporation level,<sup>26</sup> particularly when the parent corporation wholly owns the subsidiary providing the numbering service. This conclusion makes sense because the Commission's neutrality rules broadly define "affiliation" for purposes of the impartiality inquiry.<sup>27</sup> For example, the Commission's

---

<sup>23</sup> See Neustar Comments at 13-24; Neustar Reply Comments at 9-16.

<sup>24</sup> See Letter from Ms. Julie Veach, WCB Chief, to Mr. Joel Zamlong, Telcordia, DA 14-1313, WC Docket Nos. 07-149 and 09-109 (dated Sept. 10, 2014) (inquiring of Ericsson's vendor financing relationships with, and gross revenues derived from, telecommunications carriers).

<sup>25</sup> Ericsson Reply Comments at 13-15.

<sup>26</sup> Third Report and Order, *Administration of the North American Numbering Plan*, 12 FCC Rcd 23040, 23077, ¶¶ 70-71 (1997) ("*NANP Third Report and Order*").

<sup>27</sup> Further Notice of Proposed Rulemaking, *In re Structure & Practices of the Video Relay Serv. Program*, 26 FCC Rcd 17367, 17465-66 n.7, ¶ 25, App. D (2011) ("*Video Relay NPRM*").

Ms. Dortch  
 September 23, 2014  
 Page 15

affiliation definition requires an examination of “direct or indirect common control,” which necessarily involves an investigation of the parent corporation’s holdings.<sup>28</sup>

In the *NANP Third Report and Order*, when Lockheed Martin IMS, a wholly owned subsidiary of Lockheed Martin Corporation, was proposed as the North American Numbering Plan Administrator, the Commission specifically evaluated the affiliate relationships of Lockheed Martin Corporation to telecommunications services providers<sup>29</sup> in which the parent had an ownership interest. Moreover, in the *Warburg Transfer Order*, the order that Ericsson cites as its authority, the Commission explained that Lockheed Martin Communications Industry Services, a business unit of Lockheed Martin IMS, could no longer serve as the NANPA because the corporate parent, Lockheed Martin Corporation, was no longer neutral due to its ownership interests in telecommunications companies through yet another subsidiary.<sup>30</sup> The Commission has thus made it abundantly plain that its central neutrality inquiry is the “corporate influence of any given TSP or TSP affiliate” over the numbering administrator.<sup>31</sup> The TSP affiliations, relationships, and influences of a parent company that owns one hundred percent of Telcordia are therefore highly relevant to an evaluation of impartiality and neutrality under Section 251(e)(1) of the Act and Commission precedent. That is particularly true here, because Ericsson has admitted that its acquisition of Telcordia was strategic, such that Ericsson’s interest in Telcordia’s operations goes well beyond its financial results. As a matter of established precedent and common sense, the Commission must thoroughly evaluate Ericsson’s TSP and interconnected VoIP affiliations and relationships.<sup>32</sup>

---

<sup>28</sup> Under the Commission’s rules, the LNPA “may not be an affiliate of any telecommunications service provider(s).” 47 C.F.R. § 52.12(a)(1)(i). An affiliate is a person who “controls, is controlled by, or is under the direct or indirect common control with another person.” *Id.* “Control” includes “[t]he power to direct or cause the direction of the management and policies of [another] person . . . by contract.” *Id.* § 52.12(a)(1)(i)(C).

<sup>29</sup> *NANP Third Report and Order*, 12 FCC Rcd at 23077, ¶¶ 70-71.

<sup>30</sup> See *Order, Request of Lockheed Martin Corp. and Warburg, Pincus & Co. for Review of the Transfer of the Lockheed Martin Communications Industry Services Business*, 14 FCC Rcd 19792, 19795, ¶ 4 (1999) (“*Warburg Transfer Order*”).

<sup>31</sup> *Order, North American Numbering Plan Administration; NeuStar, Inc. Request to Allow Certain Transactions Without Prior Commission Approval and to Transfer Ownership*, 19 FCC Rcd 16982, 16985, ¶ 9 (2004) (“*Safe Harbor Order*”).

<sup>32</sup> This approach is consistent with the application of the neutrality requirements for the most recent NANPA and Pooling Administrator (“PA”) procurements conducted by the Commission. The NANPA and PA solicitations specifically require an inquiry into affiliations. See FCC12R0007 Amendment 1, at 1-3 (Mar. 21, 2012) and FCC13R0002, at 16 (Apr. 26, 2013).

Ms. Dortch  
 September 23, 2014  
 Page 16

Moreover, an evaluation of an entity's attributable owners – all the way up the corporate chain – has been a staple of the Commission's affiliation rules in other contexts. Just as Section 251(e)(1) requires the Commission to examine the neutrality of the LNPA's attributable owners, Sections 310(b)(3) and 310(b)(4) require the Commission to evaluate the identities of its licensees' attributable owners up and across the chain of ownership, control, and influence. Like the Commission's neutrality rules,<sup>33</sup> the Commission's foreign ownership rules use a five percent threshold as a way to judge the ability of attributable owners – all entities in the corporate chain of ownership – to control an affiliate.<sup>34</sup> Indeed, this is consistent with the Commission's ownership inquiry in other contexts too. For example, the Commission broadly defines an "applicant" for purposes of its anti-collusion rule as including "all controlling interests in the entity submitting a short-form application to participate in an auction . . . [including] ownership interests . . . amounting to 10 percent or more of the entity."<sup>35</sup> Thus, Ericsson's assertion that the Commission can ignore its affiliations and relationships with TSPs finds no support in the Commission's precedent or rules.<sup>36</sup>

**6. Ericsson's Claim that Neustar's Contract with CTIA Creates the Same Neutrality Concerns Is Incorrect.** Neustar has a contract with CTIA to develop and maintain a

---

<sup>33</sup> See *Safe Harbor Order*, 19 FCC Rcd at 16991, 16993, ¶¶ 22, 30.

<sup>34</sup> See Second Report and Order, *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934*, 28 FCC Rcd 5741, 5770-71, ¶¶ 52-54 (2013).

<sup>35</sup> 47 C.F.R. § 1.2105(c)(7)(i); see Memorandum Opinion and Order, *Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, PP Docket No. 93-253, 9 FCC Rcd 7684, 7687-88, ¶ 9 (1994) (finding that "if holders of attributable interests were not considered [as part of this rule], collusive arrangements would be possible simply through the creation of a separate entity to act as the 'applicant'").

<sup>36</sup> Like the rest of its defense of SunGard's neutrality, Ericsson's defense of KKR's acquisition of Rignet misses the mark. As Neustar explained, SunGard is affiliated with Rignet, a TSP, because both entities are commonly owned by KKR, and one of KKR's partners sits on Rignet's board of directors. See Neustar Comments at 38. Ericsson claims that SunGard and Rignet are not affiliates because they are each owned by distinct KKR funds. See Ericsson Reply Comments at 41-42. But Ericsson concedes that "both funds have the same general partner and are managed by KKR & Co. L.P." *Id.* SunGard and Rignet are thus affiliates by "indirect common control" through KKR. 47 C.F.R. § 52.12(a)(1)(i). At a minimum, KKR's interest in Rignet creates undue influence over SunGard, which by itself disqualifies SunGard. See Vendor Qualification Survey § 3.4 at Telcordia05010; *Video Relay NPRM*, 26 FCC Rcd at 17466-67, ¶ 25, App. D (proposing that "the administrator may not be subject to undue influence by parties with a vested interest in the outcome of VRS program").

Ms. Dortch  
September 23, 2014  
Page 17

database of common short codes and to assign codes to applicants.<sup>37</sup> This agreement does not give Neustar any interest in the outcome of numbering activities; that Ericsson even makes this argument demonstrates its fundamental misunderstanding of neutrality principles. Ericsson's Managed Services Agreements, unlike Neustar's contract with CTIA, put Ericsson in the business of running telecommunications networks.<sup>38</sup> Neustar is not running telecommunications networks, and there has never been even the slightest suggestion that Neustar's contract with CTIA compromises its neutrality. Ericsson's focus on Neustar's contract with CTIA, moreover, has special irony, because Ericsson's President and CEO serves on, and is Secretary of, CTIA's 2014 Board of Directors – vividly illustrating Ericsson's alignment with the wireless industry.<sup>39</sup> As explained below, Ericsson's commitment to neutrality is half-hearted at best. Like Neustar, every LNPA must adopt and maintain neutrality as a core or primary business purpose as opposed to an ancillary interest or strategic edge to deepen relationships with favored or prospective customers.

**7. Telcordia's Proposed Safeguards Are Insufficient and Contrary to Existing FCC Requirements.** Neustar has already established in its Comments and Reply that Ericsson is aligned with, and under the undue influence of, major wireless companies in the United States through its many relationships including managed services agreements that preclude the Commission from finding that it is impartial or neutral under Section 251(e)(1).<sup>40</sup> Ericsson's status as a telecommunications network equipment manufacturer likewise disqualifies it and its affiliate from serving as the LNPA. The record further demonstrates that its subcontractor SunGard, too, is non-neutral, thus disqualifying Ericsson's bid. However, Ericsson attempts to overcome these fatal deficiencies by offering the fig leaf of "safeguards." Even if Ericsson could overcome the neutrality deficiencies described above and in previous filings, its proposed safeguards fall far short of the required standards enforced by the FCC. First, although Ericsson has proposed these "safeguards" for Telcordia, Ericsson has not agreed to comply with any of them. Second, Ericsson's safeguards instead seriously dilute the time-tested neutrality requirements, and introduce the risk of unpredictable consequences for competition in the telecommunications industry.<sup>41</sup>

---

<sup>37</sup> The contract also requires Neustar to comply with a neutrality Code of Conduct similar to the LNPA Code of Conduct.

<sup>38</sup> See Ericsson Reply Comments at 25.

<sup>39</sup> See <http://www.ctia.org/about-us/board-of-directors>.

<sup>40</sup> See Neustar Comments at 13-24; Neustar Reply Comments at 9-16.

<sup>41</sup> Among other shortcomings, some provisions of Ericsson's proposed LNPA Code of Conduct apply only to directors, officers, employees, and contractors "directly involved in LNPA services," creating a neutrality loophole with the potential to swallow the rule.

Ms. Dortch  
 September 23, 2014  
 Page 18

<u>Neutrality Safeguards Mandated By FCC</u>	<u>Neustar</u>	<u>Telcordia</u>	<u>Ericsson</u>
Will never show any preference to any TSP	✓	✓	
Shareholders will not have access to user data or proprietary information of TSPs	✓	✓	
<b>Shareholders will ensure no user data or proprietary information from any TSP is disclosed to the LNPA</b>	✓		
Confidential information about the LNPA's business services and operations will not be shared with employees of any TSP	✓	✓	
<b>No person employed by, or serving in the management of any shareholder of the LNPA will be directly involved in the day-to-day operations of the LNPA</b>	✓		
<b>No employees of any company that is a TSP will be simultaneously employed (full-time or part-time) by the LNPA</b>	✓		
No member of the LNPA's board will simultaneously serve on the board of a TSP	✓	✓	
<b>No employee of the LNPA will hold any interest, financial or otherwise, in any company that would violate the neutrality requirements of the FCC</b>	✓		
Will hire an independent party to conduct a neutrality review	✓	✓	
<b>Bylaws and other corporate documents will require it to comply with all neutrality rules</b>	✓		
<b>Boards of subsidiaries will adhere to a Code of Conduct and neutrality requirements</b>	✓		
<b>No single shareholder will control more than 40% of the board</b>	✓		
No director of the LNPA will be affiliated with a TSP	✓	✓	
<b>No director will be nominated or chosen by a TSP or TSP affiliate</b>	✓		
Majority of board will be independent	✓	✓	
<b>No changes to bylaws, charter, or securities will be made that would provide a TSP or TSP affiliate with rights not enjoyed by other holders of the securities class</b>	✓		
<b>No special rights or classes of stock will be issued to TSPs or TSP affiliates</b>	✓		
<b>Numbering administration functions will be severable if there are corporate changes</b>	✓		
<b>Will provide certification by entities holding 5% or more of its stock, including all affiliated funds, that they are not a TSP or TSP affiliate, as well as a mechanism that prevents it from registering the shares of this entity in the meantime</b>	✓		
<b>Will seek prior FCC approval before acquiring an interest in a TSP or TSP affiliate</b>	✓		
Will comply with FCC debt limitations	✓	✓	
<b>Will provide the FCC and NANC with copies of certification forms and supporting documentation of shareholders who own more than 5% equity within five days of receipt</b>	✓		
<b>Will provide to the FCC and the NANC a description of any changes to its organizational structure, along with a detailed organization chart, within five days of the change</b>	✓		
<b>Will be able to provide copies of its equity ownership information, certifications, and shareholder filings within two business days</b>	✓		

Ms. Dortch  
 September 23, 2014  
 Page 19

**8. A Rulemaking Is Required.** The Commission’s designation of a new entity to serve as LNPA is an “exercise [of] its rulemaking authority”<sup>42</sup> that requires issuance of an NPRM, adoption of a Report and Order, and other APA-mandated procedures. Ericsson’s claim that the Commission’s designation decision will resolve a dispute between individual parties<sup>43</sup> is incorrect: there is no current legal dispute that the Commission’s designation decision will resolve. Rather, the Commission must make a forward-looking policy decision that will have industry-wide impact. That is the essence of the sort of legislative determination that implicates the Commission’s rule-making authority. It is not an adjudicatory function – as the Supreme Court expressly recognized when it stated that the designation of an entity to serve as a numbering administrator *requires* the FCC to engage in rule-making.<sup>44</sup> The Commission is not deciding a private dispute; it can take any action that is supported by substantial evidence in the record. Indeed, Ericsson concedes that “the Commission specifically reserved for itself the ultimate choice of LNPA.”<sup>45</sup> That decision does not simply involve the application of governing legal rules to a determination of parties’ respective legal rights, but instead implicates the Commission’s broad quasi-legislative, policy-making function.<sup>46</sup>

Moreover, although Ericsson argues that “the Commission has already established the process for selecting the LNPA,”<sup>47</sup> that is not the case. The Commission has taken no action whatsoever in the relevant dockets.<sup>48</sup> And the Bureau’s orders issued in March and May 2011 approved a process; they did not establish any criteria to govern the selection. The RFP documents – never publicly approved by the Commission or the Bureau – do not resemble the

---

<sup>42</sup> *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 382 n.9 (1999).

<sup>43</sup> *See* Ericsson Reply Comments at 51.

<sup>44</sup> Ericsson does not contest that the designation of an entity to serve as LNPA is an exercise of the Commission’s authority under Section 251(e)(1).

<sup>45</sup> Ericsson Reply Comments at 101.

<sup>46</sup> *See* 5 U.S.C. § 551(4); *see also Daingerfield Island Protective Soc’y v. Babbitt*, 823 F. Supp. 950, 957 (D.D.C. 1993), *aff’d in part*, 15 F.3d 1159 (D.C. Cir. 1993), *supplemented and aff’d*, 40 F.3d 442 (D.C. Cir. 1994); *Franks v. Salazar*, 816 F. Supp. 2d 49, 59 (D.D.C. 2011) (“Stated differently, the ‘central distinction between rulemaking and adjudication’ is that ‘rules have legal consequences only for the future.’”) (citing *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 216-17 (1988) (Scalia, J., concurring)).

<sup>47</sup> Ericsson Reply Comments at 52.

<sup>48</sup> Ericsson claims in passing and without any citation that the Commission delegated its authority to designate an impartial numbering administrator to the Wireline Competition Bureau. *See id.* at 100-101. That is not true, and Ericsson itself concedes that the Commission has reserved to itself designation authority under Section 251(e)(1). *See id.* at 51.

Ms. Dortch  
 September 23, 2014  
 Page 20

sort of legal standards that an adjudicator might apply in determining the rights of disputing parties.<sup>49</sup>

Furthermore, Ericsson has no legally meaningful response to the point that the Commission previously designated Neustar as LNPA pursuant to an informal rulemaking process: it published a notice of proposed rulemaking in the Federal Register, it published the designation in the Federal Register as a rule, and it incorporated the designation in the Code of Federal Regulations. Ericsson simply asserts – notwithstanding all this – that the designation of Neustar as LNPA was an adjudication, but it has no evidence of that, and all the evidence is to the contrary.<sup>50</sup> Even Ericsson cannot contest that a designation that was made pursuant to informal rulemaking can only be changed pursuant to informal rulemaking. Any attempt to avoid that process would be unlawful.

**9. The Extension of the Bidding Deadline Was Illegitimate:** Ericsson is incorrect that “the decision to extend the due date for proposals was both reasonable and well within the discretion of the FoNPAC and the SWG to conduct the LNPA procurement.”<sup>51</sup> The record supports the opposite conclusion: that the bid deadline was [BEGIN CONFIDENTIAL INFORMATION] [REDACTED] [END CONFIDENTIAL INFORMATION] All of Ericsson’s key premises are contradicted by the record: [BEGIN CONFIDENTIAL INFORMATION] [REDACTED] [END CONFIDENTIAL INFORMATION]

---

<sup>49</sup> Ericsson notes (at 52 n.130) that the APA defines adjudication as the “agency process for the formulation of an order” which is defined to include any agency disposition “in a matter other than rule making but including licensing.” 5 U.S.C. § 551(6), (7). But that definition does not help Ericsson, because this is not a licensing, and Ericsson does not contend otherwise. Moreover, the definition it offers supports the conclusion that, but for the carve-out, licensing would meet the general definition of rulemaking, and therefore would not constitute adjudication. To the extent Ericsson suggests that the designation of an LNPA resembles licensing, that supports the conclusion that the decision is a rulemaking, not an adjudication.

<sup>50</sup> Ericsson makes the tired argument that the fact that Neustar – which had already been designated as an impartial LNPA – was substituted for Perot Systems in certain regions without an additional rulemaking shows that the designation decision is adjudicatory. But the original designation of Neustar as LNPA anticipated that Neustar could serve not only in the regions for which it had been chosen, but also as a substitute in other regions. Neustar has already explained this on several occasions, *see, e.g.*, Neustar Comments at 59-60, and Ericsson has no response.

<sup>51</sup> Ericsson Reply Comments at 70.

Ms. Dortch  
September 23, 2014  
Page 21

The NAPM [BEGIN CONFIDENTIAL INFORMATION]

[REDACTED]

[REDACTED]

<sup>52</sup> NAPM March 20, 2013 Report at 28 (“NAPM Process Report”).

<sup>53</sup> NAPM Process Report, Attach. 2 at 85. [BEGIN CONFIDENTIAL INFORMATION]

[REDACTED] [END  
CONFIDENTIAL INFORMATION]

<sup>54</sup> *Id.* at 80. [BEGIN CONFIDENTIAL INFORMATION]

[REDACTED] [END CONFIDENTIAL  
INFORMATION]

<sup>55</sup> *Id.* at 72 (emphasis added).

<sup>56</sup> *Id.* [BEGIN CONFIDENTIAL INFORMATION]

[REDACTED] [END CONFIDENTIAL INFORMATION]

<sup>57</sup> See Neustar Comments at 67-69; Neustar Reply Comments at 38-40.

<sup>58</sup> [BEGIN CONFIDENTIAL INFORMATION]

[REDACTED]

Ms. Dortch  
September 23, 2014  
Page 22

[REDACTED]  
[REDACTED] [END CONFIDENTIAL INFORMATION] – and still does not claim – that it was, in fact, confused about or unaware of the deadline. Therefore – and contrary to Ericsson’s claim that the extension reflects “actions . . . within the NAPM’s discretion . . . to ensure equal treatment and rectify an otherwise potentially ambiguous RFP provision”<sup>61</sup> – the extension cannot be explained or justified by the record.

Ericsson’s claim that there has been no prejudice to Neustar is likewise plainly incorrect. Absent from Ericsson’s comments is any assurance that it [BEGIN CONFIDENTIAL INFORMATION] [REDACTED] [END CONFIDENTIAL INFORMATION] This confirms the advantage it received, and the prejudice to Neustar.

Ericsson also argues that, although it would have been disqualified under FAR, the FAR does not apply here and is therefore irrelevant. That is a deeply cynical argument, as Ericsson is well aware that [BEGIN CONFIDENTIAL INFORMATION] [REDACTED] [REDACTED] [END CONFIDENTIAL INFORMATION] Ericsson’s argument thus emphasizes that [BEGIN CONFIDENTIAL INFORMATION] [REDACTED] [REDACTED] [END CONFIDENTIAL INFORMATION] That alone fatally taints the RFP process.

---

[REDACTED]  
[REDACTED] [END CONFIDENTIAL INFORMATION]

<sup>59</sup> NAPM Process Report, Attach. 3, at 88.

<sup>60</sup> *Id.* at 89-90. [BEGIN CONFIDENTIAL INFORMATION] [REDACTED] [REDACTED] [END CONFIDENTIAL INFORMATION]

<sup>61</sup> Ericsson Reply Comments at 72.

Ms. Dortch  
September 23, 2014  
Page 23

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, a copy of this letter is being filed via ECFS. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Aaron M. Panner".

Aaron M. Panner

cc: Daniel Alvarez  
Nicholas Degani  
Rebekah Goodheart  
David Goldman  
Amy Bender  
Julie Veach  
Jonathan Sallet  
Kris Monteith  
David Simpson  
Roger Sherman  
Lisa Gelb  
Michele Ellison  
Randy Clarke  
Ann Stevens  
Sanford Williams  
Diane Griffin Holland  
Neil Dellar