

November 21, 2014

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Telephone Number Portability, et al.*, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109

Dear Ms. Dortch:

In what is now the fourth round of public comments since NAPM announced in 2010 that it would seek competitive bids for the LNPA contract that begins in 2015,¹ Telcordia Technologies, Inc., d/b/a iconectiv responds to the Commission's request for comments² on Neustar's Petitions for Declaratory Rulings,³ by re-submitting its Opposition to each Petition, which are attached.⁴ Neustar's endless filings fail to raise any substantive issue that has not been exhaustively discussed in the record, and Telcordia believes any necessary response is contained in the documents which it has already filed.⁵

¹ See the attached Timeline of Comment Cycles Since 2010.

² *Wireline Competition Bureau Seeks Comment on Petitions for Declaratory Ruling Filed by Neustar*, Public Notice, DA 14-1629, WC Docket No. 09-109, CC Docket No. 95-116 (Nov. 7, 2014).

³ Petition of Neustar for Declaratory Ruling Concerning the Local Number Portability Administration Selection Process, WC Docket No. 09-109, CC Docket No. 95-116 (filed Feb. 12, 2014) ("Neustar Feb. 12, 2014 Petition"); Neustar Petition for Declaratory Ruling, WC Docket No. 09-109, CC Docket No. 95-116 (filed Oct. 22, 2014) ("Neustar Oct. 22, 2014 Petition").

⁴ Opposition of Telcordia Technologies, Inc., d/b/a iconectiv, WC Docket Nos. 09-109 & 07-149, CC Docket No. 95-116 (filed Feb. 24, 2014); Opposition of Telcordia Technologies, Inc., d/b/a iconectiv to Neustar's Petition for Declaratory Ruling, WC Docket Nos. 09-109 & 07-149, CC Docket No. 95-116 (filed Nov. 3, 2014) ("Telcordia Nov. 3, 2014 Opposition").

⁵ Since the Bureau solicited public comment on NANC's selection recommendation, Telcordia has made the following substantive filings: Comments of Telcordia Technologies, Inc., d/b/a iconectiv, WC Docket No. 09-109 and CC Docket No. 95-116 (filed July 25, 2014); Reply Comments of Telcordia Technologies, Inc., d/b/a iconectiv, WC Docket No. 09-109, CC Docket No. 95-116 (filed Aug. 22, 2014) (errata filed Sept. 3, 2014) (including a copy filed by Telcordia Counsel in the FCC SCIF); Ex Parte Response of Telcordia Technologies, Inc., d/b/a iconectiv to Neustar Reply Comments, WC Docket Nos. 09-109 & 07-149, CC Docket No. 95-116 (filed Sept. 24, 2014); Letter from James Arden Barnett, Jr., Rear Admiral, USN

Neustar's two Petitions for Declaratory Rulings, as well as Neustar's November 6, 2014 ex parte letter,⁶ demonstrate yet again that Neustar failed to raise any of its objections to the selection process or the content of an RFP at the appropriate points in the process. Neustar's process objections, including its newly minted FACA claims, and its asserted claims of "flaws" in the RFP were all knowable at the time the Bureau sought comment on the selection process in 2011 and the RFP in 2012—yet Neustar never raised its arguments at that time.⁷ Having deliberately foregone the opportunity raise timely objections—at stages when the selection processes could have been adjusted or the RFP modified before bids were submitted—Neustar has forfeited any claim to be entitled to yet another round of bidding. There is no reason for the Commission to tolerate or reward such sandbagging of the procurement process: indeed, in the analogous context of federal procurements, post-hoc attacks on RFPs are disallowed precisely to avoid the kind of cynical tactics Neustar now employs.⁸ As a broad group of carriers, including

(Retired), Counsel for Telcordia, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 09-109 & 07-149, CC Docket No. 95-116 (filed Sept. 24, 2014) (discussing filing a copy of the Telcordia Sept. 24, 2014 Ex Parte Response in the FCC SCIF); Letter from John T. Nakahata, Counsel for Telcordia Technologies, Inc., d/b/a iconectiv, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 09-109 & 07-149, CC Docket No. 95-116 (filed Sept. 29, 2014); Letter from John T. Nakahata, Counsel for Telcordia Technologies, Inc., d/b/a iconectiv, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 09-109 & 07-149, CC Docket No. 95-116 (filed Oct. 17, 2014); Letter from John T. Nakahata, Counsel for Telcordia Technologies, Inc., d/b/a iconectiv, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 09-109 & 07-149, CC Docket No. 95-116 (filed Oct. 27, 2014); Telcordia Nov. 3, 2014 Opposition.

- ⁶ Neustar Feb. 12, 2014 Petition; Neustar Oct. 22, 2014 Petition; Highly Confidential and Restricted Access Critical Infrastructure Information Letter of Submission of Neustar, Inc., WC Docket No. 09-109 and CC Docket No. 95-116, filed (Nov. 6, 2014) ("Neustar Nov. 6, 2014 Ex Parte").
- ⁷ For example, Neustar argues that the RFP has significant gaps when compared to the 2014 NIST cybersecurity Framework. Neustar Nov. 6, 2014 Ex Parte at 3. Yet Neustar admits the 2014 Framework is largely a restatement of 2009 and 2012 frameworks, which were knowable at the time the Commission solicited comment on the procurement documents. *Id.* n.6 ("While the Framework is relatively recent, it is largely a restatement of standards that have long been recommended for comprehensive information security and that could easily have been incorporated into the RFP"). This illustrates that Neustar itself was or should have been aware of these issues at the time the RFP was under consideration, but Neustar failed to raise the issue when it had the opportunity.
- ⁸ "[V]endors cannot sit on their rights to challenge what they believe is an unfair solicitation, roll the dice, and see if they receive award[,] and then, if unsuccessful, claim the solicitation was infirm." *Blue & Gold Fleet, L.P. v. United States*, 492 F.3d 1308, 1314-15 (Fed. Cir. 2007) (holding that an offeror in a federal procurement must raise any challenges to the terms of the solicitation before proposal submission, or those challenges are waived) (quotation omitted). *See also* 4 C.F.R. § 21.2(a)(1) (requiring protests to solicitations filed at the

wireless carriers, ILECs and CLECs recently told the Commission, “While Neustar had ample opportunity to suggest or request modifications to any aspect of the selection process during the time for public comment, it did not do so until well after vendor responses were submitted. . . [I]t is telling that Neustar’s questions and concerns about the selection process arose only *after* Neustar believed it would not be the recommended vendor.”⁹

Here is just a sample of what Neustar told the Commission before it learned that it might not be the recommended LNPA:

- “[T]he industry has the correct incentives to design and implement the RFP process to ensure that the LNP administrator (“LNPA”) continues to deliver service of the highest quality and value.”¹⁰
- “The proposed RFP Documents garnered unanimous support from the industry, state regulators, and consumers.”¹¹
- “The best and most legally defensible way for the Commission to proceed is to approve the RFP Documents as drafted and to allow the process to move forward.”¹²
- “The process established by the Wireline Competition Bureau's May 2011 Order and elaborated in the RFP Documents ensures competition while providing the Commission the full benefit of the expertise of the industry and the NANC in making a final determination with respect to the next Local Number Portability Administrator.”¹³
- “Neustar emphasized that the Commission should allow the RFP process to move forward as soon as possible, pursuant to the process developed by the FoNPAC and recommended by the NANC. That process has the strong support of all aspects of the industry, state regulators, and consumers, and is consistent with the Bureau's May 2011 Order.”¹⁴

Government Accountability Office to be made prior to bid opening, or no later than the next closing time for receiving proposals following incorporation).

⁹ Letter of Peter Karanjia, Counsel for CTIA-The Wireless Association, to Marlene H. Dortch, Secretary, FCC at 2, WC Docket Nos. 07-149 & 09-109, CC Docket No. 95-116, (filed Nov. 20, 2014) (emphasis in original) (“CTIA *et al.* Nov. 20, 2014 Letter”).

¹⁰ Letter from Aaron M. Panner, Counsel for Neustar, Inc., to Marlene H. Dortch, Secretary, FCC at 1, WC Docket Nos. 09-109 & 07-149, CC Docket No. 95-116 (filed Jan. 11, 2013).

¹¹ *Id.*

¹² *Id.*

¹³ Letter from Aaron M. Panner, Counsel for Neustar, Inc., to Marlene H. Dortch, Secretary, FCC at 1, WC Docket Nos. 09-109 & 07-149, CC Docket No. 95-116 (filed Nov. 6, 2012) (“Neustar Nov. 6, 2012 Letter”).

¹⁴ Letter from Aaron M. Panner, Counsel for Neustar, Inc., to Marlene H. Dortch, Secretary, FCC at 1, WC Docket Nos. 09-109 & 07-149, CC Docket No. 95-116 (filed Oct. 23, 2012).

- “[T]he Commission has established a different regulatory framework to govern the LNPA contract than the NANPA and PA contracts. In the latter two cases, the Commission chose a government-contracting model and conducted federal procurements under the FAR. By contrast, the Commission has delegated the task of recommending the NPAC vendor to the NANC and the NAPM, LLC, with Commission oversight; the NAPM, LLC, not the government, is the purchaser under the current NPAC contracts. That makes sense: while administration of the North American Numbering Plan and number pooling are government functions, the Communications Act places on local exchange carriers the obligation to ‘provide ... number portability in accordance with requirements prescribed by the Commission.’”¹⁵
- “[T]he NAPM, LLC and the NANC have exactly the right incentives to ensure that the RFP process results in the best value for the industry. The members of the NAPM, LLC (and the FoNPAC in particular) bear the vast majority of the costs of LNP; they are also the companies that rely on the NPAC in running their businesses.”¹⁶
- “Neustar agrees with the Bureau that the Consensus Proposal [for SWG composition] is ‘consistent with prior delegations of authority and Commission rules regarding LNPA selection.’”¹⁷
- “All parties—the industry, state regulators, and consumers—support the RFP Documents as drafted; the RFP Documents have attracted unanimous support precisely because they are designed to promote rigorous competition.”¹⁸
- “The NAPM LLC has made available extensive technical documentation concerning the requirements for NPAC services.”¹⁹
- “Neustar does not believe that it is appropriate for potential respondents to the NAPM LLC/NANC request for proposal (‘RFP’) to put forward changes to the Consensus Proposal by which a vendor will be recommended to the Commission.”²⁰

¹⁵ Neustar Nov. 6, 2012 Letter at 5. (citations and emphasis omitted).

¹⁶ Letter from Aaron M. Panner, Counsel for Neustar, Inc., to Marlene H. Dortch, Secretary, FCC at 3, WC Docket Nos. 09-109 & 07-149, CC Docket No. 95-116 (filed Oct. 18, 2012).

¹⁷ Reply Comments of Neustar, Inc. at 2 n.6, WC Docket No. 09-109 & CC Docket No. 95-116 (filed Mar. 29, 2011) (“Neustar Mar. 29, 2011 Reply Comments”).

¹⁸ Letter from Aaron M. Panner, Counsel for Neustar, Inc., to Marlene H. Dortch, Secretary, FCC at 4, WC Docket Nos. 09-109 & 07-149, CC Docket No. 95-116 (filed Nov. 21, 2012).

¹⁹ Letter from Aaron M. Panner, Counsel for Neustar, Inc. to the Honorable Geoffrey G. Why, Tri-Chair, North American Numbering Council Selection Working Group, *et al.* at 2, WC Docket Nos. 09-109 & 07-149, CC Docket No. 95-116 (filed Nov. 14, 2011).

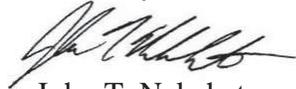
²⁰ Neustar Mar. 29, 2011 Reply Comments at 2.

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Neustar's 2014 objections are all merely attempts to game the process—at a substantial cost to telecommunications providers and consumers. As telecommunications carriers that will have to pay the bill (and pass the costs on to their customers) have told the FCC, every day that Neustar succeeds in delaying selection increases the likelihood the telecommunications providers will have to continue to pay Neustar approximately \$40 million per month after July 1, 2015, when they could have been paying much less.²¹

Please contact me if you have any questions.

Sincerely,



John T. Nakahata
*Counsel to Telcordia Technologies, Inc.,
d/b/a iconectiv*

Attachments

²¹ CTIA *et al.* Nov. 20, 2014 Letter at 2.