

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:

Petition of Telcordia Technologies, Inc.
To Reform Amendment 57 and To Order a
Competitive Bidding Process for Number
Portability Administration

WC Docket No. 07-149

Petition of Telcordia Technologies, Inc. To
Reform or Strike Amendment 70, To
Institute a Competitive Bidding for Number
Portability Administration, and To End the
LLC's Interim Role in Number Portability
Administration Contract Management

WC Docket No. 09-109

Telephone Number Portability

CC Docket No. 95-116

**OPPOSITION OF TELCORDIA TECHNOLOGIES, INC. D/B/A ICONECTIV
TO NEUSTAR'S PETITION FOR A DECLARATORY RULING**

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY 1

II. NEUSTAR’S PETITION MUST BE DISMISSED AS AN UNTIMELY AND TIME-BARRERED PETITION FOR RECONSIDERATION OR APPLICATION FOR REVIEW. 7

A. Neustar Has Not Filed a Proper Petition for Declaratory Ruling.....8

B. Neustar Seeks Untimely Review or Reconsideration of Final Commission Actions9

III. NEUSTAR WAIVED ALL OF ITS NEWLY-MINTED OBJECTIONS TO THE LNPA SELECTION PROCESS 13

A. Despite Clear Opportunity to Do So, Neustar Never Heretofore Objected to the Bureau’s Authority to Conduct the LNPA Procurement or the Legal Framework of the Procurement.14

B. Neustar Waived Objections to the Composition of the FoNPAC, and In Any Event Ignores the Role of the SWG and NANC.15

C. During the Public Comment Period on the Proposed RFP, Neustar Raised Almost None of the Concerns with the RFP’s Technical Specifications, Provisions as to Transition Requirements, Provisions as to the IP Transition or Any Other Substantive Issues that It Now Claims Should Have Been Included in the RFP, and Endorsed the RFP Even Without Those Few Changes It Proposed.17

D. Neustar Never Sought an Explanation from the Commission or Bureau for Changes Made to the RFP.....18

IV. NEUSTAR’S SUBSTANTIVE OBJECTIONS TO THE RFP ARE MERITLESS..... 19

A. The Selection Process Has Been Open to Key Constituencies – Whether or Not Those Constituencies Availed Themselves of the Opportunities.19

B. The RFP Required Bidders to Provide a Robust Transition Plan to be Evaluated as Part of the Bid.....23

C. The RFP Required Bidders to Address Technical Specifications and Functions That Neustar Claims Should Have Been Included.....24

D. The RFP Required Bidders to Address Future Evolutions of the NPAC.30

E. The RFP Required Bidders to Describe Their Plans for Accommodating the IP Transition, Which is the Most that Could or Should Be Done at This Time.30

V. THE LNPA SELECTION PROCESS AS IMPLEMENTED HAS BEEN FAIR AND EQUITABLE 33

VI. THE COMMISSION SHOULD DISMISS OR ALTERNATIVELY DENY NEUSTAR’S PETITION AND PROCEED TO AN AWARD. 35

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:

Petition of Telcordia Technologies, Inc.
To Reform Amendment 57 and To Order a
Competitive Bidding Process for Number
Portability Administration

WC Docket No. 07-149

Petition of Telcordia Technologies, Inc. To
Reform or Strike Amendment 70, To
Institute a Competitive Bidding for Number
Portability Administration, and To End the
LLC's Interim Role in Number Portability
Administration Contract Management

WC Docket No. 09-109

Telephone Number Portability

CC Docket No. 95-116

OPPOSITION OF TELCORDIA TECHNOLOGIES, INC. D/B/A ICONECTIV

I. INTRODUCTION AND SUMMARY.

Telcordia Technologies, Inc., d/b/a iconectiv, opposes Neustar's Petition for a Declaratory Ruling, filed February 12, 2014 ("Petition").¹ Although the Commission has not issued a Public Notice calling for comments pursuant to 47 C.F.R. § 1.2(b), there should be no doubt that Neustar's request is both procedurally defective and substantively meritless.

Neustar's Petition is not a proper petition for declaratory ruling. It does not seek to clarify a Commission rule or *Order* in order to "terminat[e] a controversy or remov[e] uncertainty." Neustar instead now belatedly asks the Commission to vacate three years of

¹ *Petition Of Neustar For Declaratory Ruling Concerning The Local Number Portability Administration Selection Process*, CC Docket No. 95-116 and WC Docket No. 09-109 (filed Feb. 12, 2014) ("Neustar Petition" or "Petition").

decisions regarding the Local Number Portability Administrator (“LNPA,” also referred to as the “Number Portability Administration Center” or “NPAC”) selection—a stunning reversal of position for a company that just one year ago asserted that “*the industry has the correct incentives to design and implement the RFP process to ensure that the LNP administrator continues to deliver service of the highest quality and value. . . . 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.*”² Over the course of the last three years, Neustar never petitioned for reconsideration or filed an application for review of any Bureau decision with respect to (i) its authority to select the LNPA, (ii) the structure of the procurement process, (iii) the contents of the RFP, or (iv) Bureau consent to an extension of the time for the submission of initial bids. It is now too late to do so—and for good reason. The Commission cannot allow parties to sandbag three years of work by waiting until the end to raise issues with decisions made months or years earlier.

As to Neustar’s new claim that the North American Portability Management LLC’s Future of the NPAC Subcommittee (“FoNPAC”) was an inappropriate entity to draft the RFP and other procurement documents or to evaluate bids, Neustar now contradicts its earlier claims that the FoNPAC was exactly the appropriate entity to conduct such work.³ Neustar’s new

² Letter from Aaron M. Panner, Counsel to Neustar, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (Jan. 11, 2013) (“Neustar Jan. 11, 2013 Ex Parte”).

³ *See, e.g.*, Letter from Aaron M. Panner, Counsel to Neustar, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (Oct. 18, 2012) (“Neustar Oct. 18, 2012 Ex Parte”) (“[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.”) (emphasis added).

arguments are particularly ironic because, when Telcordia proposed selection process changes during the FCC’s comment process, Neustar proclaimed that it did “not believe it was appropriate” for a prospective vendor to suggest alterations in the selection process.⁴ Moreover, Neustar now conveniently ignores the fact that the FoNPAC performs its duties in conjunction with— and ultimately subordinate to—the North American Numbering Council’s Selection Working Group (“SWG”), which is empowered to reach its own conclusions and recommendations. The SWG was put in place precisely because NAPM was not broadly representative of all stakeholders, whereas the NANC includes state public utility commissioners, state consumer advocates, and organizations representing small incumbent local exchange carriers (e.g., NTCA – The Broadband Association) and small Competitive Local Exchange Carriers (“CLECs”) (e.g., COMPTTEL). Most importantly, in the end it is the Commission (or the Bureau under delegated authority), not the FoNPAC, SWG or the NANC, that approves all procurement documents and selects the LNPA.

None of the substantive deficiencies that Neustar now claims to exist in the RFP were unknowable at the time the Commission solicited public comment on the Request for Proposal (“RFP”). For the most part, Neustar never raised its new-found concerns with the RFP as it was being drafted, and even for those that it did raise, it subsequently told the FCC that the procurement documents should be “approve[d]...as drafted.”⁵ If Neustar genuinely believed the RFP, Vendor Qualification Statement (“VQS”) and Technical Requirements Document (“TRD”) (collectively “RFP” or “procurement documents”) needed more specifications, then Neustar could and should have raised those when the Commission requested public comment on the draft

⁴ Reply Comments of Neustar, Inc., WC Docket No. 09-109 and CC Docket No. 95-116 (filed Mar. 29, 2011).

⁵ Neustar Jan. 11, 2013 Ex Parte at 1.

procurement documents in August 2012, and Neustar should not have told the Commission in January 2013 that the procurement documents should be released without those changes.

Through its silence, Neustar thus has waived all such objections.⁶ By failing to file an Application for Review, or otherwise protest the terms of the RFP at that stage, Neustar also waived any objections to changes that it previously requested, but which were not ultimately included in the RFP documents.

Moreover, the procurement documents did in fact address the technical issues that Neustar now claims should have been addressed, albeit not in the same way that Neustar now claims should have been done. A qualified respondent experienced in US Number Portability would have leveraged its understanding of industry best practices and required customer support and included these elements in its response and design for the LNPA. For instance:

- *Transition to a New LNPA.* The RFP clearly required specific information about transition-related activities, required a detailed transition plan, and obliged any vendor to absorb its own transition costs if awarded the contract. Bidders were required to provide their proposed solutions to ensure that they had the ability to meet the technical and operational specifications of the NPAC/SMS system. In addition, NAPM reserved the right to cease the transition at any time and assess penalties if a vendor failed to meet any of its responsibilities. A bidder thus must provide a robust transition plan or risk omitting details or appearing unprepared to perform.

⁶ During the same time frame, Neustar certainly managed to oppose various changes proposed by Telcordia. *See e.g.* Ex Parte Letter from Aaron Panner, Counsel to Neustar, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (Dec. 14, 2012); Ex Parte Letter from Aaron Panner, Counsel to Neustar, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (Nov. 16, 2012); Ex Parte Letter from Aaron Panner, Counsel to Neustar, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (Oct. 9, 2012); Ex Parte Letter from Aaron Panner, Counsel to Neustar, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (Nov. 6, 2012) (“Neustar Nov. 6, 2012 Ex Parte”); Ex Parte Letter from Aaron Panner, Counsel to Neustar, Inc. to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (Sept. 25, 2012) (“Neustar Sept. 25, 2012 Ex Parte”); Ex Parte Letter from Aaron Panner, Counsel to Neustar, Inc. to Marlene H. Dortch, Secretary FCC, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (Sept. 11, 2012).

- *Emergency Preparedness.* The RFP required bidders to submit significant information regarding disaster recovery and emergency preparedness on the NPAC system that extended to working with the carriers. The RFP required bidders to provide methods and procedures and functionality to support mass modifications, which can be used to support disasters and emergencies in service provider networks.
- *Law Enforcement Support.* The RFP required the LNPA to provide an Enhanced Law Enforcement Platform that law enforcement agencies can use to obtain information as to a target's service provider. The RFP requires bidders to be able to meet a series of requirements for an Interactive Voice Response ("IVR") system, including the ability to permit authorized users to obtain information about multiple telephone numbers in a single call; maintain system security, support secured access for authorized users; and provide disaster recovery and backup services. In addition, the RFP specifies the required level of performance as 99.9% reliability with redundant systems; and 24 x 7 availability.
- *Ecosystem Management.* The RFP documents required bidders to describe how they would meet specific availability and reliability requirements, including system availability, testing, disaster recovery, backup, and help desk requirements, and providing system heartbeats functionality. Implicit in the RFP is the need for early detection to avoid any outages or problems, and a qualified vendor would expect this to be included as part of its obligations as an LNPA.
- *Mass Port Processing.* The RFP required vendors to provide information about how they would support NPAC/SMS functional requirements including requirements for mass-port and mass-modification functions, NPA splits, and FTP requests. A qualified vendor would plan to build tools to support such services as part of its obligations as an LNPA.
- *Consumer Confidence in Porting (Porting Intervals).* The RFP includes a full suite of Functional Requirements (FRS) and Service Level Requirements (SLRs) that govern how a bidder will perform in meeting the needed reliability, availability, capacity and throughput of transactions to support the porting process. A qualified bidder would understand the significance of timely porting to consumers and would expect this to be included as part of its obligation as an LNPA.
- *Neutrality.* Neutrality is one of the selection criteria under the procurement documents, which required bidders to submit a neutrality opinion letter and to agree to a series of neutrality-related obligations, including regular neutrality audits. The FCC has made clear that it will decide neutrality and this issue is properly before the decision-maker under the RFP process.
- *Future Evolution of the NPAC.* The RFP required vendors to support specific required enhancements for the next LNPA, including IPv6, and an alternative NPAC/SMS interface; as well as possible future requirements, such as intra-service-provider ports, and automation of certain processes with the Pooling Administration System. As a catchall requirement, the RFP required bidders to have the flexibility to incorporate

“any required enhancements in the future as a result of regulatory mandates” and that the fixed price proposed included “all costs to develop and implement this future consideration.”⁷ That the RFP does not set forth additional “specific criteria” for future evolutions is reasonable; the future is, by its nature, not susceptible to such definition.

- *IP Transition.* The RFP required a bidder to be “flexible in order to support the transition of the Public Switched Telephone Network (PSTN) to an all-Internet Protocol (IP) network” and to “work expeditiously with the industry to implement any required changes.”⁸ Neustar’s claim that the RFP should have prescribed the NPAC’s role in an all-IP environment, or should have conducted a “bake-off” among competing visions would have been inappropriate. Whether the NPAC should function as a national ENUM registry is a policy issue which, although not new, is still at the beginning of Commission consideration. Moreover, several different approaches to IP interconnection have recently been published for industry review. Whatever the outcome of those deliberations, the NPAC vendor must be prepared and committed to evolve the NPAC, if necessary, as the RFP requires. The Commission need not and should not restart the LNPA procurement to await those decisions.

Finally, Neustar’s claim that the LNPA selection process has been unfair because the FoNPAC, with the Bureau’s consent, extended the deadline for initial bids in April 2013, at the start of the bidding, but did not accept Neustar’s unilaterally revised bid of October 2013 or issue a request for an additional round of Best and Final Offers is meritless. In the first instance, the Bureau has already directed the NANC to investigate and report on allegations of unfairness.⁹ The Commission can then take any action it deems appropriate. Contrary to Neustar’s suggestion, there is no reasonable basis from which to infer that any prospective vendor had received information about any other vendor’s bid between April 5 and April 22. In contrast, when Neustar unilaterally submitted a self-described “more favorable” bid in October 2013, just

⁷ 2015 LNPA RFP § 7.2.4 (“RFP”).

⁸ RFP § 7.2.5.

⁹ See Letter from Julie A. Veach, Chief, Wireline Competition Bureau, to The Honorable Betty Ann Kane, Chair, North American Numbering Council, WC Docket No. 09-109, CC Docket No. 95-116 (Feb 11, 2014) (“Veach Feb. 11, 2014 Letter”).

five weeks after it had submitted its Best and Final Offer, the circumstances highly suggest that Neustar had received some information regarding its relative competitive standing.

Neustar apparently believes that the only way that it can continue its nearly \$470 million per-year sinecure under the current no-bid LNPA contract is, after nearly three years, to blow up the ongoing LNPA selection process. But there is no basis on which to do so. The Commission should permit the LNPA selection process that it prescribed in May 2011 to run its course so that the Commission can select the next LNPA(s) with sufficient time to permit implementation by June 30, 2015.

Accordingly, if the Commission acts at all with respect to the Petition, the Commission should dismiss or, in the alternative, deny, Neustar's Petition.

II. NEUSTAR'S PETITION MUST BE DISMISSED AS AN UNTIMELY AND TIME-BARRED PETITION FOR RECONSIDERATION OR APPLICATION FOR REVIEW.

Neustar's Petition is not a proper petition for declaratory ruling. Rather, Neustar's Petition asks for review or reconsideration of several final actions of the Bureau related to the LNPA selection process. Petitions for reconsideration and applications for review must be filed within 30 days of public notice of a final action. But each of the actions Neustar challenges was made public well over 30 days ago—indeed, some actions it challenges were made public *years* ago. Nor has Neustar alleged any “extraordinary circumstances” that would permit the Commission to waive the statutory and regulatory deadline for petitions for reconsideration and applications for review. Accordingly, Neustar's Petition must be dismissed.

A. Neustar Has Not Filed a Proper Petition for Declaratory Ruling.

A petition for declaratory ruling is one that seeks to “terminat[e] a controversy or remov[e] uncertainty.”¹⁰ Controversy and uncertainty can arise, for instance, when the statutory basis for Commission action is unclear, or when regulated entities disagree as to the effect of rules, decisions, or orders issued by the Commission or its designated authority.

Neustar’s Petition, however, does not raise any issues of ambiguity in Commission rules or orders. Instead, it asks the Commission to amend the RFP that the Bureau approved; it seeks revision of the LNPA selection process rules that the Bureau set forth; and it requests that the NAPM be required to pursue additional proposals from offerors.¹¹ None of these requests seek to “terminat[e] a controversy or remov[e] uncertainty.” Indeed, Neustar is not “uncertain” about any of these issues—it “merely disagree[s] with them.”¹² As the Commission has recently made clear, “That third parties may disagree with a Bureau decision does not render it a ‘controversy’

¹⁰ 47 C.F.R. § 1.2(a). See *Petition for Declaratory Ruling Regarding the Right of Users (& CPE Vendors or Maint. Pers. Acting on the Users' Behalf) to Access Embedded Complex Intrasystem Wiring*, 101 F.C.C.2d 287, 294 ¶ 21 (1985) (“The Commission has made a number of decisions regarding inside wiring over the last several years, and the fact that the parties disagree as to the effect of those rulings suggests clarification by way of a declaratory ruling is appropriate. Clearly, establishing burdens and responsibilities may avoid a myriad of individual disputes thereby avoiding costs for the disputants and the adjudicators.”); compare *Junk Fax Prevention Act of 2005*, Order, DA 12-697, 27 FCC Rcd. 4912, 4914 (2012) (“We conclude that Petitioner raises no issue of controversy or uncertainty and, thus, Anda's petition for declaratory ruling is not properly before the Commission. Petitioner asks the Commission to clarify the statutory basis for the rule at issue. The rule itself, the requirements of which are clearly set forth in section 64.1200(a)(3)(iv) of the Commission's rules, was adopted by the Commission in the *Junk Fax Order*. The *Junk Fax Order* cited the statutory provisions, including section 227 of the Act, that provide the Commission authority for the rules adopted in that *Order*. Thus, there is no controversy or uncertainty regarding the statutory basis for the Commission's authority to adopt the rule and thus no need to issue a declaratory ruling on that matter.”).

¹¹ Neustar Petition at 1.

¹² *Improving Pub. Safety Commc'ns in the 800 Mhz Band*, Order, DA 11-337, 26 FCC Rcd. 2035, 2039 ¶ 10 (2011).

within the meaning of Section 1.2. Were it otherwise, virtually every Commission order would be subject to collateral attack by entities—whether or not they have standing—filing petitions for declaratory rulings.”¹³ Where a party believes an unambiguous decision is incorrect, that party “should either file a timely petition for reconsideration with this Commission or a timely appeal or petition for review with an appropriate Court of Appeals. Such persons should not attempt to use a petition for declaratory ruling as a substitute for a petition for reconsideration.”¹⁴

The absence of controversy or uncertainty makes clear that Neustar’s request is much more properly a petition for reconsideration or application for review of various final decisions of the Bureau. As such, it is subject to the rules governing such petitions—including the 30-day filing deadlines set forth in Sections 1.106(f) and 1.115(f) of the Commission’s Rules.

B. Neustar Seeks Untimely Review or Reconsideration of Final Commission Actions.

Neustar is well beyond the 30-day statutory and regulatory deadline for filing either a petition for reconsideration or an application for review. Because each of the “flaws” in the LNPA selection process that Neustar cites is, in fact, an incremental final decision by the Bureau, Neustar’s opportunity to challenge these final actions in a petition for reconsideration has long

¹³ *Id.*

¹⁴ *Pub. Serv. Comm'n of Md. & Md. People's Counsel Applications for Review of A Memorandum Op. & Order by the Chief, Common Carrier Bureau Denying the Pub. Serv. Comm'n of Md. Petition for Declaratory Ruling Regarding Billing & Collection Servs. The Pub. Utils. Comm'n of N.H. Petition for Rule Making Regarding Billing & Collection Servs.*, FCC 89-20, 4 FCC Rcd. 4000, 4004, ¶ 30 (1989). *See also Havens*, FCC 02-256, 17 FCC Rcd. 17,588, 17,593 (2002) (finding that a petition styled as one for declaratory ruling was in fact “a collateral attack on the Division’s actions” and, as such, was untimely filed under Section 1.115(d)).

since passed. If considered an application for review of the Bureau's decisions, moreover, Neustar's Petition is untimely and fails to make the required showings.¹⁵

A final action is one that is both the consummation of an agency's decision making process and in which either "rights or obligations have been determined" or from which "legal consequences will flow."¹⁶ Final actions may be issued by the full Commission or by staff pursuant to delegated authority;¹⁷ they become final upon public notice—*e.g.*, "upon release of the document containing the full text of such action, or in the event such a document is not released, upon release of a public notice announcing the action in question."¹⁸

Each of the actions Neustar challenges, though part of the larger LNPA selection process, represents an action that determined "rights and obligations" (in the case of the delegations to the NANC, with directions "to obtain assistance from the NAPM"), or from which "legal consequences will follow" (in the case of the procurement documents). And each of the following actions became final well over 30 days before Neustar filed its Petition:

- The Bureau's determination that it, acting pursuant to delegated authority, would oversee the LNPA selection process became final on March 8, 2011.¹⁹
- The Bureau's determination of the LNPA vendor selection process, including delineating the respective roles of the NANC, SWG and FoNPAC with respect to

¹⁵ See 47 C.F.R 1.115(b)(2).

¹⁶ *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (cited in *Fox Television Stations, Inc. v. F.C.C.*, 280 F.3d 1027, 1037 (D.C. Cir. 2002)).

¹⁷ See 47 C.F.R § 0.203.

¹⁸ 47 C.F.R. § 1.102(b)(1).

¹⁹ *Petition of Telcordia Technologies Inc. to Reform Or Strike Amendment 70, to Institute Competitive Bidding for Number Portability Administration and to End the NAPM LLC's Interim Role in Number Portability Administration Contract; Telephone Number Portability, Order and Request for Comment, DA 11-454, 26 FCC Rcd. 3685, 87-88 ¶ 8 (2011) ("Mar. 8, 2011 Order").*

drafting procurement documents, evaluating proposals, and making vendor selection recommendations became final on May 16, 2011.²⁰

- Bureau approval of the procurement documents became final with the Public Notice announcing release of the procurement documents on February 5, 2013.²¹
- Bureau approval of the extension of the deadline for RFP responses to April 22, 2013 became final no later than the April 17, 2013 update on the NAPM, LLC website.²²

The rules establish a clear deadline for petitions for reconsideration—they must be filed within 30 days from the date of public notice of the final action being challenged.²³ Moreover, that 30-day deadline is set forth in Section 405(a) of the Communications Act of 1934, as amended, which requires that any petition for reconsideration of an action of the Commission or any designated authority within the Commission be filed within 30 days of public notice of that order.²⁴

The Commission cannot waive the 30-day deadline and entertain a late-filed petition for reconsideration unless “extraordinary circumstances indicate that justice would thus be served.”²⁵ The D.C. Circuit, which articulated the “extraordinary circumstances” rule in

²⁰ *Petition of Telcordia Technologies Inc. to Reform Or Strike Amendment 70, to Institute Competitive Bidding for Number Portability Administration and to End the NAPM LLC’s Interim Role in Number Portability Administration Contract; Telephone Number Portability, Order, DA 11-883, 26 FCC Rcd. 6839, 6840, 6844 ¶¶ 6, 21 (2011) (“May 16, 2011 Order”).* Neustar’s Petition is now nearly three years overdue.

²¹ *Wireline Competition Bureau Announces Release of Procurement Documents for the Local Number Portability (LNP) Administration Contract, Public Notice, DA 13-154, 28 FCC 1003 Rcd. (2013).* Neustar’s Petition is now over eleven months overdue.

²² See *4/17/2013 Update, NPAC RFI/RFP, North American Portability Management LLC, available at https://www.napmlc.org/pages/npacrfp/npac_rfp.aspx* (last visited Feb. 24, 2014).

²³ 47 C.F.R. § 1.106(f); 1.115(d).

²⁴ 47 U.S.C. § 405(a); see *Mr. George Robbins, Letter, DA 09-2195, 24 FCC Rcd. 12,520 (2009)* (denying a petition for reconsideration to the Media Bureau as untimely filed).

²⁵ *Gardner v. F.C.C.*, 530 F.2d 1086, 1091 (D.C. Cir. 1976).

Gardner v. F.C.C., found that the Commission’s continuing jurisdiction over its matters extends to “rehearing on the untimely petition of a party, *where the late filing is in some sense attributable to a procedural violation by the Commission.*”²⁶ In fact, in *Gardner*, the affected party did not file a timely petition for reconsideration because the Commission failed to provide notice to the party—and the party, even though originally unrepresented by counsel, immediately hired a lawyer and filed the petition once he became aware of the Commission’s action. The court found that these circumstances were sufficiently extraordinary to justify review of a petition filed beyond the statutory deadline, in no small part because of the Commission’s own error in the first place.²⁷ In other cases, however, the D.C. Circuit has found that late-filed petitions involving “a sophisticated business concern represented all the while by distinguished Washington, D.C. counsel” do not implicate the same concerns.²⁸

Nor can Neustar claim that this petition merely revises a prior attempt to petition for reconsideration. Petitions for reconsideration must “state with particularity the respects in which the action taken by the designated authority should be changed”²⁹ and “state the form of relief sought.”³⁰ Though Neustar has raised some of its issues in prior filings,³¹ none of those

²⁶ *Id.* (emphasis added).

²⁷ *See Reuters Ltd. v. FCC*, 781 F.2d 946, 952 (D.C. Cir. 1986) (citing *Gardner*, 530 F.2d at 1091-92 & n.24).

²⁸ *Reuters*, 781 F.2d at 952.

²⁹ 47 C.F.R. § 1.115(b)(3).

³⁰ 47 C.F.R. § 1.115(b)(4).

³¹ Comments of Neustar, Inc., CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (filed Sept. 13, 2012) (“Neustar Sept. 13, 2012 Comments”); Letter from Aaron M. Panner, Counsel to Neustar, Inc. to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (Oct. 23, 2012) (“Neustar Oct. 23, 2012 Ex Parte”); Letter from Aaron M. Panner, Counsel to Neustar, Inc. to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (Apr. 24, 2013) (“Neustar Apr. 24, 2013 Dortch Ex Parte”).

comments or ex parte letters meet the requirements for a petition for reconsideration because they do not state with particularity what, exactly, should be changed—nor do they request any specific relief. For instance, although Neustar objected to the extension of the deadline for submissions in April 2013, that filing did not request specific changes to the process, or any relief.³² All Neustar asked for was a description of the Commission’s deliberations. Such a request can hardly be considered a petition for reconsideration.

Neustar’s petition is equally deficient as an application for review. Parties seeking Commission review of Bureau actions must file within 30 days of public notice of such actions. As shown above, Neustar has not met that obligation.³³ Nor has Neustar met the other regulatory requirements for an application for review—namely, stating with specificity, from among a list of factors, how the challenged actions warrant Commission review.³⁴ As discussed below, it has not shown that the actions were based on critical factual errors or any other prejudicial error.

III. NEUSTAR WAIVED ALL OF ITS NEWLY-MINTED OBJECTIONS TO THE LNPA SELECTION PROCESS.

Neustar’s petition is built on arguments that Neustar could have raised months or years ago. Neustar has waived each by failing to timely raise them when it was appropriate to do so.³⁵

³² See Letter from Aaron M. Panner, Counsel to Neustar, Inc., to Sean. A. Lev, General Counsel, FCC, *et al*, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (Apr. 24, 2013) (“Neustar Apr. 24, 2013 Lev Ex Parte”).

³³ 47 C.F.R. § 1.115(b)(2)(i)-(v).

³⁴ 47 C.F.R. § 1.115(b)(2).

³⁵ *Covad Commc’ns Co. v. F.C.C.*, 450 F.3d 528 (D.C. Cir. 2006); *In the Matter of Cmty Teleplay, Inc., et al.*, 133 FCC Rcd. 12,426, 12,428-29 (May 28, 1998) (holding that petitioners waived their objections after failing to file comments objecting or to file a petition for reconsideration during the initial rule making proceeding).

A. Despite Clear Opportunity to Do So, Neustar Never Heretofore Objected to the Bureau’s Authority to Conduct the LNPA Procurement or the Legal Framework of the Procurement.

Before filing its Petition, Neustar never previously argued that the Commission did not delegate to the Bureau, rather than the Office of the Managing Director, the authority to oversee the LNPA selection process.³⁶ In fact, the Bureau has clear authority to conduct the LNPA selection process. The Commission is authorized to “create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis.”³⁷ The Commission delegated this authority to the Bureau in 47 C.F.R. § 0.91, which permits the Bureau to “[c]arry out the functions of the Commission under the Communications Act of 1934, as amended,” subject to certain inapplicable reservations to the Commission.³⁸ But even if Neustar’s argument had merit, which it does not, Neustar waived it by failing to raise it when the Bureau made clear its involvement in the LNPA selection process in its March 8, 2011 Order, and again in its May 10, 2011 Order.

Moreover, Neustar has never previously challenged the legal framework for the LNPA procurement, or claimed that it was insufficiently clear. To the contrary, Neustar previously endorsed the legal framework adopted by the Bureau.³⁹ Having done so, Neustar cannot now

³⁶ Petition at 32.

³⁷ 47 U.S.C. § 251(e)(1).

³⁸ *See also* 47 C.F.R. § 0.91(a) (“Overall objectives [of the Bureau] include meeting the present and future wireline telecommunications needs of the Nation; fostering economic growth; ensuring choice, opportunity, and fairness in the development of wireline telecommunications; promoting economically efficient investment in wireline telecommunications infrastructure; promoting the development and widespread availability of wireline telecommunications services; and developing deregulatory initiatives where appropriate.”); 47 C.F.R. § 0.291 (authorizing the Chief, Wireline Competition Bureau, to carry out the functions delegated under § 0.91), 47 C.F.R. § 0.331.

³⁹ Neustar Jan. 11, 2013 Ex Parte; *see also, e.g.*, Letter from Aaron M. Panner, Counsel to Neustar, Inc. to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket

object to it. Accordingly, Neustar has waived its complaints that the Commission failed to define a clear legal framework for the LNPA selection.

B. Neustar Waived Objections to the Composition of the FoNPAC, and In Any Event Ignores the Role of the SWG and NANC.

Despite clear opportunity to do so, Neustar never previously objected to the NAPM FoNPAC's role in the selection process, and thus has waived those objections as well. Indeed, Neustar embraced the LNPA selection process proposed by the NAPM, LLC and NANC Chair, even though it would have given the FoNPAC a greater role in drafting procurement documents, evaluating submitted bids, and recommending a proposed vendor to the Commission than did the Bureau's process in the May 16, 2011 Order.⁴⁰ Later, during the notice and comment period for the RFP, Neustar again asserted that the Commission's delegation of "the task of recommending the NPAC vendor to the NANC and NAPM, LLC, with Commission oversight...makes sense"⁴¹ and asked the Bureau to "permit the RFP process to proceed under the supervision of the FoNPAC—as the *RFP Documents* anticipate—making clear that the FoNPAC is free to provide necessary clarifications as the process moves forward while ensuring that all potential bidders are competing on a level playing field."⁴² Ironically, Neustar objected when Telcordia questioned whether the NAPM—a private entity—should have such broad discretion in selecting

Nos. 07-149 & 09-109 at 1 (Nov. 22, 2011) ("Neustar supports the LNPA selection process set forth by the Commission in its May 16, 2011, Order.")

⁴⁰ See Reply Comments of Neustar, Inc., WC Docket No. 09-109 & CC Docket No. 95-116, at 2 n.6 (filed Mar. 29, 2011) ("Neustar Mar. 29, 2011 Reply Comments") (stating that Neustar "intends to participate in the LNPA selection process set out in the Consensus Proposal" and that "Neustar agrees with the Bureau that the Consensus Proposal is 'consistent with prior delegations of authority and Commission rules regarding LNPA selection.'").

⁴¹ Neustar Nov. 6, 2012 Ex Parte.

⁴² Neustar Sept. 13, 2012 Comments at 3.

the NPAC vendor.⁴³ And it was *Telcordia*'s concern that the FoNPAC had too much authority that caused the Bureau "to require SWG review and approval of all procurement documents submitted by the FoNPAC" and give the SWG "authority to modify draft procurement documents."⁴⁴

Neustar cannot now argue, nearly three years after the Bureau finalized the LNPA vendor selection process and over a year after the Commission released the RFP that Neustar itself endorsed, that the process as set forth in those documents is flawed because it relies, in part, on the FoNPAC's participation. The opportunity to raise these arguments has more than come and gone.

⁴³ At various times, Neustar stated:

- "Because it is not a federally-funded endeavor, the LNPA contracts should remain private contracts negotiated and entered into between private entities, subject to the existing levels of oversight by the NANC and the Commission." Neustar Mar. 29, 2011 Reply Comments at 3-4;
- "To the extent [*Telcordia*] continues to argue that the LNPA procurement is a government procurement comparable to the selection of the TRS Fund Administrator or the Universal Service Fund Administrator, its argument is incorrect... To be sure, the Commission exercises ultimate authority to approve the industry's selection of the LNPA. But that does not change the fact that the government is not procuring any services for itself." Neustar Sept. 25, 2012 Ex Parte;
- "[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." Neustar Oct. 18, 2012 Ex Parte at 3;
- "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." Neustar Oct. 23, 2012 Ex Parte at 1.

⁴⁴ May 16, 2011 *Order* ¶ 13.

C. During the Public Comment Period on the Proposed RFP, Neustar Raised Almost None of the Concerns with the RFP’s Technical Specifications, Provisions as to Transition Requirements, Provisions as to the IP Transition or Any Other Substantive Issues that It Now Claims Should Have Been Included in the RFP, and Endorsed the RFP Even Without Those Few Changes It Proposed.

Neustar’s laundry list of provisions that should have been included in the RFP is surprising given that Neustar presented almost none of these to the FCC when it put the RFP out for public comment. By failing to raise them during the course of the RFP drafting process, Neustar has waived its objections regarding the myriad provisions it now says should have been included. Even with respect to the few modifications that Neustar proposed in its RFP Comments, including as to the draft RFP’s proposed evaluation criteria,⁴⁵ Neustar subsequently waived those objections when, in January 2013, it told the FCC that it should “proceed [...] to approve the RFP Documents as drafted.”⁴⁶

Interestingly, Neustar’s current concern that the RFP does not adequately address all technical requirements for the LNPA did not surface in 2011 when it opposed an effort to distribute technical information. Over a year before the Bureau released the final RFP, Telcordia requested access to information about the technical aspects of the current LNPA to put all bidders on a level playing field to make it efficient for bidders when addressing technical specifications and transition plans.⁴⁷ Neustar opposed the request.⁴⁸ At that juncture, Neustar

⁴⁵ See Neustar Sept. 13, 2012 Comments at 18-20.

⁴⁶ Neustar Jan. 11, 2013 Ex Parte at 1.

⁴⁷ See Ex Parte Letter from John T. Nakahata and Madeleine V. Findley, Counsel to Telcordia Technologies, Inc., to Honorable Geoffrey G. Why, Tri-Chair, North American Numbering Council Selection Working Group, *et. al*, WC Docket Nos. 07-149 & 09-109 (Nov. 3, 2011).

⁴⁸ Ex Parte Letter from Aaron M. Panner, Counsel to Neustar, Inc., to Honorable Geoffrey G. Why, Tri-Chair, North American Numbering Council Selection Working Group, *et. al*, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (Nov. 14, 2011).

saw no need for all bidders to be on equal ground when crafting their bid or to allow the RFP to include specific technical specifications and transition requirements when such position was not to its advantage.

Once—and only once—Neustar “*recommend[ed]* that the [RFP] criteria be clarified to include a consideration of the respondent’s demonstrated understanding of the role of innovation and technological change... [and] the completeness, robustness, and anticipated efficacy of each respondent’s Transition and Implementation Plan.”⁴⁹ Almost immediately thereafter, however, Neustar abandoned these recommendations and instead urged the Commission to “allow the RFP process to move forward”⁵⁰ because “the RFP Documents have attracted unanimous support precisely because they are designed to promote rigorous competition.”⁵¹

Now that Neustar’s confidence in the outcome of the procurement apparently has waned, Neustar now wants greater technical specificity. Two years after the Bureau sought comment on the procurement documents, however, these arguments are waived.

D. Neustar Never Sought an Explanation from the Commission or Bureau for Changes Made to the RFP.

Although Neustar now apparently objects to the FCC’s issuance of the revised RFP without any explanation of the revisions, it has—yet again—waived its opportunity to do so. If Neustar truly was concerned with the changes made to the RFP, it could have filed, as described above, a petition for reconsideration or an application for review.⁵² It did not. Neustar remained

⁴⁹ Neustar Sept. 13, 2012 Comments at 19-20.

⁵⁰ Neustar Oct. 18, 2012 Ex Parte at 2.

⁵¹ Letter from Aaron M. Panner, Counsel to Neustar, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 at 4 (Nov. 21, 2012) (“Neustar Nov. 21, 2012 Ex Parte”); *see also* [Neustar Jan. 11, 2013 Ex Parte at 1](#) (urging the FCC to “approve the RFP Documents as drafted and to allow the process to move forward”).

⁵² 47 C.F.R. § 1.104.

utterly silent with respect to any concerns regarding the terms of the RFP until its Petition.

Neustar's time to object to any changes to the RFP has passed and this argument, too, is waived.

IV. NEUSTAR'S SUBSTANTIVE OBJECTIONS TO THE RFP ARE MERITLESS.

After almost four years of actively supporting the NAPM and the proposed RFP documents, Neustar now argues that the RFP documents are flawed and fail to reflect the needs and concerns of the entire cross-section of NPAC users. But the "deficiencies" that Neustar now claims to see in the selection process and RFP (and other procurement documents) are addressed, either directly or through what a bidder had to commit to develop pursuant to Section 10.1 of the RFP. An informed, qualified vendor would be aware of the needs and support services Neustar references, and would plan to work with service providers during the implementation process to validate and deliver these services prior to going live. To the extent it is not dismissed as an untimely petition for reconsideration or for raising arguments previously waived, Neustar's Petition accordingly should be denied as meritless.

A. The Selection Process Has Been Open to Key Constituencies – Whether or Not Those Constituencies Availed Themselves of the Opportunities.

Interested parties have been afforded multiple opportunities to participate in and comment on the development of the RFP. These public comment opportunities stretch back over a period of almost four years, going back to at least early 2010, when the NAPM told the FCC

that it intended to issue an RFP for a new LNPA agreement.⁵³ In fact, the NANC has considered and discussed the procurement process at its quarterly meetings since at least March 2010.⁵⁴

The NANC—a federal advisory committee required to have a balanced membership—is comprised of a broad cross-section of NPAC stakeholders.⁵⁵ Among its members are state public utility commissioners, state consumer advocates, and organizations representing small incumbent local exchange carriers (e.g., NTCA – The Broadband Association) and small CLECs (e.g., COMPTEL). NANC makes decisions through consensus. The NANC Chair worked collaboratively with the NAPM to draft the 2011 NAPM/NANC Chair Consensus Proposal that became the basis for the final LNPA vendor selection process adopted in May 2011.

Neustar conveniently overlooks the role of the NANC LNPA Selection Working Group in the selection process. The SWG has worked with the FoNPAC throughout the process of

⁵³ Ex Parte Letter from Todd Daubert, Counsel to NAPM LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 07-149 & 09-109 (Mar. 22, 2010). *See also, e.g., NAPM LLC Announces Request For Information From Vendors On Upcoming Request For Proposals For LNP Database Platforms And Services*, Public Notice, DA 10-1800, 25 FCC Rcd. 13,379 (2010) (“The Commission encourages full competition in the RFP process and issues this Public Notice to ensure that interested parties are aware of the upcoming process.”); Transcript, NANC Meeting, at 65-67 (Oct. 22, 2010) (urging the NAPM to publicize its Request for Information through channels in addition to the *Federal Register* to ensure it receives “a lot of input from [...] the consumer groups, think tanks, people in the industry, stakeholders, et cetera.”), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-305778A1.pdf.

⁵⁴ The NAPM LLC reported to the NANC in October 2009 that it had, six months earlier, formed a Future of NPAC Subcommittee to “determin[e] recommendations for the future of the NPAC including the time frame for developing an RFI/RFP for future vendors and contracts.” NAPM LLM Report to the NANC, Oct. 15, 2009, *available at* http://nanc-chair.org/docs/mtg_docs/Oct09_NAPM_LLC_Report.doc.

⁵⁵ Wireline Competition Bureau Announces GSA’s Approval of the Renewal of the North American Numbering Council Charter through September 20, 2015, Public Notice, DA 13-2227 (Nov. 20, 2013), *see also* 41 C.F.R § 102-3.30(c) (“An advisory committee must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed.”).

drafting the RFP documents and making vendor recommendations, and had the ability to revise the FoNPAC's drafts.⁵⁶ As Neustar itself noted in 2011, participation in the SWG was open to any interested NANC member,⁵⁷ including the very constituencies that Neustar now argues were excluded from the process.⁵⁸ That those groups may not have availed themselves of the opportunity to participate is not a condemnation of the process. Indeed, Neustar's new-found concern belies its past position that the "RFP process includes appropriate opportunities for input by all constituencies"⁵⁹ and has "garnered virtually unanimous support: every segment of the industry, state regulators, and consumers have urged the Commission to allow the RFP process to move forward."⁶⁰ Neustar reiterated that view again in 2012⁶¹ and, as recently as last year, raised no concern regarding industry acceptance of or input in the RFP and other procurement documents.⁶²

In turn, the FCC offered yet more opportunities for any interested stakeholder to participate. At each stage of the process, the FCC published the selection process and

⁵⁶ May 16, 2011 *Order*.

⁵⁷ Neustar Mar. 29, 2011 Reply Comments at 2 n.6 ("Neustar also notes that the Consensus Proposal, particularly in the way that it addresses the Selection Working Group, is wholly consistent with long standing NANC procedures. NANC working groups are open to all NANC members without restriction and without regard to what other entities choose to participate.").

⁵⁸ NANC/NAPM Consensus Proposal at 1 (Feb. 14, 2011); Mar. 8, 2011 *Order*.

⁵⁹ Ex Parte Letter from Aaron Panner, Counsel to Neustar Inc., to Marlene Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (Mar. 9, 2012) at Att. (Presentation to Federal Communications Commission, Office of General Counsel, at 3, (Mar. 9, 2012)).

⁶⁰ Neustar Oct. 18, 2012 Ex Parte at 2; *see also* Neustar Oct. 23, 2012 Ex Parte.

⁶¹ *See* Neustar Oct. 19, 2012 Ex Parte; Neustar Oct. 23, 2012 Ex Parte; Neustar Nov. 21, 2012 Ex Parte.

⁶² Neustar Jan. 11, 2013 Ex Parte.

procurement documents for public comment. Thus, all stakeholders had the opportunity to submit feedback on the selection process itself,⁶³ and on the substance of the draft RFP documents,⁶⁴ before the RFP was issued. Both Neustar and Telcordia participated extensively in the FCC process. Additional comments were submitted by carriers, public interest organizations, consumer advocates, and state regulators.⁶⁵ Yet, at no time did Neustar raise concerns that affected constituencies lacked an opportunity to provide input. Nor does Neustar offer any explanation for its prior silence now. Ironically, as stated above, it was *Telcordia* that pushed to ensure that state regulators, smaller providers, and public advocates had a meaningful role in the selection process.⁶⁶ The SWG was put in place precisely because the NAPM was not broadly representative of all number portability stakeholders.⁶⁷ As a result of the NANC and SWG's roles, the selection process has been open to all interested stakeholders throughout the process. Neustar's sudden concern is misplaced and without merit.

⁶³ Mar. 8, 2011 Order.

⁶⁴ *Wireline Competition Bureau Seeks Comment on Procurement Documents for the Local Number Portability (LNP) Administration Contract*, Public Notice, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109, DA No. 12-1333, 27 FCC Rcd. 11,771 (2012).

⁶⁵ Comments of Comcast Corp., CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (filed Sept. 13, 2012); Comments of AT&T, CTIA, CenturyLink, Level 3, Sprint, T-Mobile, Verizon, USTelecom, and XO Communications, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (filed Sept. 13, 2012); Comments of Massachusetts Department of Telecommunications and Cable, WC Docket No. 09-109 and CC Docket No. 95-116 (filed Mar. 23, 2011); Comments of the National Association of State Utility Consumer Advocates, WC Docket No. 09-109 and CC Docket No. 95-116 (filed Mar. 22, 2011); Comments of Connecticut Department of Public Utility Control, WC Docket No. 09-109 and CC Docket No. 95-116 (filed Mar. 28, 2011); Comments of Idaho Public Utilities Commission, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (filed Mar. 22, 2011).

⁶⁶ Ex Parte Letter from John T. Nakahata, Counsel to Telcordia Technologies, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (Apr. 12, 2010).

⁶⁷ *See id.*

B. The RFP Required Bidders to Provide a Robust Transition Plan to be Evaluated as Part of the Bid.

Neustar’s substantive criticisms of the RFP’s transition plan provisions are equally flimsy. Far from failing to address “critical transition requirements,” Section 12.3 of the RFP requires bidders to provide a detailed transition plan, describing both the anticipated timeline and a list of transition-related activities.

- Section 12.3 asks bidders to detail their proposed approach to implementation (tasks and milestones), staff management (staff categories and hours per task), risk management, change control, and quality assurance in order to develop, implement, and transition to the new NPAC/SMS without disrupting current or continuing NPAC operations within the published timeline.
- Section 3.3 of the VQS provides that a bidder will only be selected as an LNPA if it “possess[es] sufficient experience and technical and operational capabilities to deliver the Services required by the RFP in a timely, cost-effective, and technically and operationally proficient manner.”
- Section 3.3.5 of the VQS requires bidders to provide information about past performance, including the ability to operate the NPAC/SMS system and to support a transition from the incumbent, including client references from entities that are independent of the RFP selection process.

Bidders simultaneously responded to the Technical Requirements Document, which required extensive information regarding a bidder’s ability to meet technical specifications for the NPAC/SMS system. Additionally, the RFP obligated bidders to provide the necessary resources to meet their transition obligations and to absorb their own costs. As an enforcement mechanism, the NAPM reserves the right to cease the transition at any time and assess penalties if a vendor fails to meet any of its responsibilities.

A bidder thus must provide a robust and comprehensive transition plan or risk omitting details or functions deemed critical and thus appearing unprepared to perform. An informed, qualified vendor that has been participating in number portability would be well aware of the technical requirements and service-provider support services, as well as the need to work closely

with *all* NPAC users during the transition and implementation period to validate and deliver all services prior to going live, and would take those concerns into account in its bid response.

Attacking the RFP's requirement for a transition plan is easy for Neustar but misleading. As the incumbent, Neustar very likely did not prepare or submit a transition plan. A transition is only required, after all, if an award is given to a bidder other than the incumbent, and Neustar has made quite clear its desire to retain its monopoly hold on the entire NPAC contract.

C. The RFP Required Bidders to Address Technical Specifications and Functions That Neustar Claims Should Have Been Included

In response to the RFP and TRD, bidders must describe their plans and ability to provide an extensive set of technical specifications and functions. These specifications include requirements that bidders describe how they will meet or provide the very functional and technical capabilities Neustar now claims have been insufficiently addressed. In addition, bidders were required to commit to develop Methods and Procedures documents, as called for in Section 10.1 of the RFP and as is customary in completing and implementing a contract, which would further address these issues.

Disaster Recovery and Emergency Preparedness. The RFP documents asked multiple questions designed to ensure that a successful bidder would be able to provide disaster and emergency services.

- Section 3.6.14 of the Vendor Qualification Survey expressly provides that “[t]he LNPA shall be responsible for providing disaster recovery and backup plans with respect to the Data Centers sufficient to ensure that all data on the NPAC/SMS is recoverable at all times. . . . Such disaster recovery and backup process shall be subject to audit and periodic testing.”
- Section 6.4 of the RFP requires bidders to comply with detailed data center redundancy requirements.
- Section 10.1 of the RFP requires bidders to provide NPAC User Methods and Procedures documents covering, among others, NPAC/SMS operations; service level

requirements; system outages; scheduled service unavailability schedules; maintenance notifications; and large port notifications.

- Section 2.1 of the TRD requires bidders to read, understand, and incorporate certain Functional Requirements Specifications business process flow documents into their bids. Specifically included in the set of business process flows is “Disaster Recovery and Backup.”
- Section 10.1 of the TRD sets out availability and reliability requirements for the NPAC/SMS system, including requirements for system availability, unscheduled downtime, detecting communication link failures, alternate routing, and switching to backup or disaster recovery machine.
- As discussed below, the RFP also specifically required bidders to address mass porting, the necessary component for temporarily shifting end users from one switch to another in the case of a disaster.

Qualified bidders, recognizing the importance of preventing disasters as well as responding to them, would likely team with best-in-class, high-performance data center companies offering high-availability systems and environments. These world-class data center companies specialize in, and are experienced with, both pre-event operational planning procedures as well as disaster recovery strategies and well-honed practices, that can be leveraged and customized to support the NPAC/SMS solution. Qualified bidders already actively involved with U.S. number portability, through industry working groups and through the LNPA’s cross regional communications on different topics, including NPAC Assistance with Disasters, would not only be aware of, but would proactively leverage their knowledge and the best practices of their data center provider, to plan to support any and all additional services that leverage NPAC capabilities that service providers expect. Such services would include assisting service providers in the event of disaster or outage, such as occurred after Hurricane Katrina. Qualified vendors would view these services as obligations of an LNPA.

Ecosystem Management. The procurement documents specifically required bidders to respond to the following questions in this area.

- Section 10.1 of the RFP requires bidders to provide NPAC User Methods and Procedures documents covering, among others, NPAC help desk problem resolution, mechanized association troubleshooting, and LTI access troubleshooting.
- Section 14.1.1 of the RFP specifies that bidders will be evaluated on their ability to provide reliability and functionality:

The Respondent demonstrates an understanding of and competency in the requirements to operate the system, and to provide the service during the term of the Master Agreements in each Region. The Respondent also demonstrates an understanding of and competency in the system availability, testing, disaster recovery, backup, and help desk requirements and provides confidence (through analysis or other demonstrable means) that their NPAC/SMS will enable the Respondent to meet all SLRs and other system performance requirements.⁶⁸

- Section 10.1 of the TRD sets out availability and reliability requirements for the NPAC/SMS system, including requirements for communication link monitoring, detecting communication link failures, continuous hardware checking, duplexing of hardware, tolerance to communication link outages, and alternate routing. Implicit in these requirements is the need for early detection to avoid any outages or problems, and a qualified vendor would have addressed that as well.
- Section 6.10 of the TRD requires bidders' proposals to fully comply with requirements regarding NPAC Monitoring of SOA and LSMS Association functionality, including a series of system heartbeats that monitor the association between the remote gateways and the NPAC.

Accordingly, far from ignoring ecosystem management, the RFP actually addressed it.

Mass Port Processing. The RFP documents specifically required bidders to respond to the following questions about mass port processing.

- Section 6.2 for the RFP covers User Support and User Training including:

REQ 2: The LNPA shall train Users, upon request, including, but not limited to:
...
(d) requesting, receiving, and understanding mass changes,

⁶⁸ RFP § 14.1.1.

REQ 3: The LNPA shall provide technical support for users who experience problems including, but not limited to:

...

(d) requesting, receiving, and understanding mass changes.

- Section 10.1 of the RFP requires bidders to provide NPAC User Methods and Procedures documents covering, among others, emergency NPA-NXX filters, NPA splits, NPAC reports, FTP site requests, and mass modifications.
- Section 3.2 of the TRD requires bidders to provide specific NPAC personnel functionality, including supporting different types of mass modifications.

Neustar suggests that a vendor must develop additional tools in order to successfully implement mass modifications and that the RFP does not specify these tools or the associated fees.

Although it is true that the RFP does not provide that level of detail, the fact that a vendor may need to develop internal tools and processes to provide or support required functionality is not uncommon when transitioning a contract. As with disaster recovery services, qualified vendors who have been participating in number portability will be aware of, and planning for, the added services that service providers expect. Vendors also will be working with such providers, particularly in developing the Methods and Procedures document required by Section 10.1 of the RFP, during transition and implementation to validate and deliver those services. Qualified vendors would view these services as obligations of an LNPA.

Public Safety. Bidders were required to respond to specific questions about public safety and law enforcement support services, including:

- Section 6.9 of the RFP requires bidders to be able to meet a series of requirements for an Interactive Voice Response (“IVR”) system, including the ability to:
 - Permit authorized users to obtain Local Service Provider information for up to 20 telephone numbers during a single call;
 - Provide 99.9% reliability with redundant IVR systems;
 - Provide 24 x 7 availability;
 - Maintain security and require PIN code for authorized user access;
 - Provide disaster recovery and backup services.

- Section 11.2 of the RFP describes the Enhanced Law Enforcement Platform that an LNPA must provide, including over 20 specific technical and operational requirements, covering access; security; data elements available to law enforcement; annual audit requirements, and so on.

The Local Number Portability Enhanced Analytical Platform (“LEAP”) is a separate platform that receives downloads of the data from the core NPAC/SMS system. LEAP enables approved law enforcement agencies to perform queries on the data in this separate platform. The RFP requirements define the key operational rules an LNPA has to follow in supporting LEAP, including what NPAC data elements it can contain, how the data can be warehoused and accessed, the Qualified Recipients who can receive the data, and other key operational requirements related to the use and security of the data. This LEAP platform functions as a data warehouse containing the permitted data elements on which approved users can run queries. The LEAP performance requirements and cost mechanisms are independent of the NPAC/SMS system. Neustar has apparently conflated them for rhetorical effect, but qualified vendors will be aware of the LEAP platform and will have factored that into their bid response.

Customer Confidence in Porting (Porting Intervals). Neustar suggests that changing NPAC vendors based on this RFP would somehow lead to delays or erode confidence in the porting process and by extension competition in the telecommunications marketplace. To the contrary, the procurement documents include a full suite of Functional Requirements (FRS) and Service Level Requirements (SLRs) that govern how the NPAC will perform in meeting the needed reliability, availability, capacity and throughput of transactions to support the porting process.⁶⁹ Compliance with these requirements would result in the LNPA meeting and possibly exceeding customers’ expectations. A qualified bidder would understand the significance of

⁶⁹ RFP § 9.

timely porting to consumers and would implement all needed tools and processes to meet these requirements. Porting intervals are set by FCC rules,⁷⁰ or, in some instances, by industry agreements.⁷¹ The wireless industry, for example, has agreed on a porting interval of two-and-a-half hours.⁷² Two critical roles contribute to a timely porting process. The NPAC plays one role: it completes the porting process with the old and new service providers upon receiving the request to port an agreed-upon number, a process that is defined in the procurement documents. The other critical role is that of the old and new service providers. Those two providers agree as part of the pre-porting process, which occurs outside of the NPAC, that the number can be ported. Thus, a new qualified LNPA provider performing the NPAC role, in conjunction with existing service provider roles, should not impact the consumer experience.

Neutrality. Telcordia agrees with Neustar that neutrality is a key characteristic for the NPAC/SMS vendor. Neutrality is one of the selection criteria under the procurement documents, which required bidders to submit a neutrality opinion letter and to agree to a series of neutrality-related obligations, including regular neutrality audits.⁷³ The FCC has made clear that it will decide the issue of a bidder's neutrality.⁷⁴ This issue is properly before the decision-maker under the RFP process.

⁷⁰ 47 C.F.R. § 52.35.

⁷¹ See, e.g., Local Number Portability Administration Working Group, *Local Number Portability Best Practices*, <https://www.npac.com/lnpa-working-group/lnp-best-practices> (last visited Feb. 24, 2014) (linking existing LNP best practices, including porting intervals).

⁷² See, e.g., Wireless Local Number Portability, FCC Encyclopedia, <http://www.fcc.gov/encyclopedia/wireless-local-number-portability-wlnp> (last visited Feb. 24, 2014).

⁷³ See, e.g., VQS §§ 1.3; 3.4; 3.5; RFP § 4.2.

⁷⁴ May 16, 2011 *Order*; Mar. 8, 2011 *Order* ¶¶ 8-9 (2011); see also VQS § 3.5,

Accordingly, Neustar’s argument that the RFP failed to address critical performance level, operational, and technical elements—elements which Neustar did not raise before now—is simply wrong.

D. The RFP Required Bidders to Address Future Evolutions of the NPAC.

Neustar erroneously contends that the RFP fails to provide sufficient requirements addressing the ways that the NPAC may need to evolve in future years. But this overlooks Section 7 of the RFP, which requires bidders to support specific required enhancements for the next LNPA, including support of IPv6, and an alternative NPAC/SMS interface; as well as possible future requirements, including intra-service provider ports, intra-carrier communications, and automation of certain processes with the Pooling Administration System.⁷⁵ Moreover, the RFP also contained a catchall requirement: bidders were asked whether their systems would have the flexibility to incorporate “any required enhancements in the future as a result of regulatory mandates” and whether the fixed price proposed included “all costs to develop and implement this future consideration.”⁷⁶ It is neither surprising nor inappropriate that the RFP does not set forth additional “specific criteria” for future evolutions; the future is, by its nature, not susceptible to such definition.

E. The RFP Required Bidders to Describe Their Plans for Accommodating the IP Transition, Which is the Most that Could or Should Be Done at This Time.

Neustar argues that the RFP is defective because it fails to specify how the NPAC should support the routing between IP service providers.⁷⁷ Neustar correctly points out that it and

⁷⁵ RFP § 7.

⁷⁶ RFP § 7.2.4.

⁷⁷ Neustar Petition at 17-18.

Telcordia have advanced different possible alternatives for the NPAC's role in the Commission's Technologies Transitions docket, GN Docket No. 13-5.⁷⁸ However, Neustar wrongly asserts that the Commission must pick among these, or other, competing views before it can select an LNPA. Whoever is selected as the LNPA will have to conform to the industry's ultimate solution as to the NPAC's role in IP routing. Accordingly, the RFP correctly stated the requirement that "[t]he next-generation NPAC/SMS architecture must be flexible in order to support the transition of the Public Switched Telephone Network (PSTN) to an all-Internet Protocol (IP) network. In addition, the LNPA must work expeditiously with the industry to implement any required changes."⁷⁹ Indeed, it would have been inappropriate for the RFP or TRD to contain more detailed specifications of the role of the NPAC in routing IP-to-IP communications, as that would have prejudged a technical evolution that is best left to the marketplace and/or the FCC policymakers.

Although Neustar contends that the question of the role of the NPAC in routing IP-to-IP communications is new, it is not. In fact, the debate as to whether NPAC should become the single ENUM registry, as Neustar prefers, or whether ENUM registries should exist outside of the NPAC, has been the subject of disputes before the NANC since at least 2005.⁸⁰ Indeed, the

⁷⁸ Letter from Scott M. Deutchman, Vice President and Deputy General Counsel, Neustar, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 12-353 & 13-5, WC Docket Nos. 13-97, 04-36, 07-243 & 10-90, CC Docket Nos. 99-200, 95-116 & 01-92 (Jan. 15, 2014); Letter from Louise L.M. Tucker, Vice President—Regulatory & Senior Counsel, iconectiv, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-5, WC Docket No. 13-97 (Jan. 31, 2014).

⁷⁹ RFP § 7.2.5.

⁸⁰ See e.g. Future of Numbering Working Group, Report and Recommendation on NANC Change Orders 399 & 400 (2005), available at http://www.nanc-chair.org/docs/nowg/May05_FoN_NANC_Change_Order_399_400_Report.doc; ("NANC Change Order 400 Report"); see also Letter of Betty Ann Kane, Chairman, North American Numbering Council, to Sharon Gillett, Chief, Wireline Competition Bureau, and attachments thereto (June 10, 2011) (transmitting the results of NANC consideration of the dispute filed

question of whether the current rules even permit NPAC to function as an ENUM registry remains pending before the Wireline Competition Bureau.⁸¹

Telcordia has long argued that the issue of the NPAC's role in IP-to-IP routing—which implicates the extent to which ENUM registries will be a private market with competition or be limited to only the designated LNPA(s)—is a policy issue that warrants resolution by the Commission, given that the Commission requires all telecommunications carriers and interconnected VoIP providers to contribute to LNPA costs.⁸² NANC's 2005 report on Change Order 400, in the section setting forth the arguments opposed to Change Order 400, highlighted why—at least with respect to an NPAC funded by mandatory carrier contributions—this is an issue for the Commission:

“Because there is only one vendor associated with the contract for the provisioning of the number portability database, Change Order 400 is the equivalent of predetermining a specific vendor solution for telephone number to URI mapping.”

[and]

by Telcordia with respect NANC Change Order 429, 430 and 435), *available at* http://www.nanc-chair.org/docs/mtg_docs/Jun11_NANC_Transmittal_Letter_Telcordia_Dispute.pdf and http://www.nanc-chair.org/docs/mtg_docs/Jun11_NANC_Telcordia_Dispute_Resolution_Team_Findings_Recs.doc.

⁸¹ *See id.*; Letter from John T. Nakahata, Counsel to Telcordia Technologies, Inc. to Thomas Koutsky, Chair, North American Numbering Council, and attachments thereto (May 26, 2009), available at http://www.nanc-chair.org/docs/mtg_docs/Telcordia_Dispute_Resolution_Request_Final.pdf and http://www.nanc-chair.org/docs/mtg_docs/Telcordia_Dispute_Resolution_Request_Attachments.pdf.

⁸² *See* Petition of Telcordia Technologies, Inc. to Reform or Strike Amendment 70, to Institute Competitive Bidding for Number Portability Administration, and to End the NAPM LLC's Interim Role in Number Portability Administration Contract Management, at 42-43, WC Docket No. 07-149 (filed May 20, 2009).

“We are also concerned about the impact on the competitive private ENUM marketplace. There are several products and service offerings from many companies that show private carrier to carrier exchange of URI data (i.e., private ENUM) is a competitive marketplace. The FCC has expressed in multiple arenas a preference for competition when feasible, and Congress has also said that when possible Internet communication should remain unregulated. Inclusion of the URIs in NPAC effectively adopts a single regulated solution that all SPs are required to use for other regulated purposes and potentially eliminates a competitive marketplace through a process that does not include all affected parties.”⁸³

These are policy questions most appropriately resolved through a process in which all interested parties may participate, not as part of a competitive bid.

In this context in which the industry (and, if necessary, the Commission) has yet to finalize the role the NPAC should play in IP-to-IP routing, the critical questions are the ones that the RFP actually asked: Will the bidder’s NPAC be flexible enough to accommodate whatever role for the NPAC in IP-to-IP routing the industry ultimately adopts, and will the bidder work expeditiously with industry to implement the role as defined by the Commission. That was all the RFP did, and it was all that it reasonably could have done. Neustar’s claim that the RFP interferes with or lacks necessary specifics regarding the IP transition is meritless.

V. THE LNPA SELECTION PROCESS AS IMPLEMENTED HAS BEEN FAIR AND EQUITABLE

As conducted to date, the LNPA selection process has been fair and equitable. There is nothing improper about the FoNPAC’s decision to extend the due date for initial proposals, nor about its decision to request only one round of BAFOs. Neustar’s complaints on both counts are a meritless and transparent attempt to manipulate the selection process to its advantage.

Neustar’s challenge to the extension for proposal submission is based on speculation and conjecture regarding the reasons for and circumstances of the extension. Moreover, Neustar fails

⁸³ NANC Change Order 400 Report at 25-26.

to identify any prejudice whatsoever arising out of the extension. Although Neustar previously speculated that the FoNPAC might have leaked Neustar’s proposal information to other offerors,⁸⁴ it has never identified an iota of evidence to support that conjecture. And, in fact, the evidence refutes it: On May 15, 2013—more than three weeks after proposals were submitted on April 22—the FoNPAC advised all offerors that it had not yet distributed the proposals internally for review, and would not do so until all relevant parties had executed an amended NDA.⁸⁵ Because Neustar’s proposal was not distributed, it could not have been leaked to any other offeror. In short, the extension was not improper, and resulted in no harm to Neustar.

Neustar’s challenge to the FoNPAC’s decision not to request multiple BAFOs is similarly meritless. Neustar’s latest filing regurgitates the same stale arguments that the FoNPAC has properly rejected to date. As Telcordia explained in its February 6, 2014 filing,⁸⁶ Neustar has no right to insist on another round of BAFOs, and any delay in the selection of the LNPA harms consumers and benefits only Neustar. Moreover, the timing of Neustar’s sudden and unsolicited demand for a second round of BAFOs—a complete about-face from its previous position that multiple BAFOs are unnecessary⁸⁷—strongly suggests that Neustar obtained confidential, non-

⁸⁴ See, e.g., Neustar Apr. 24, 2013 Lev Ex Parte; Letter from Aaron Panner, Counsel to Neustar, to Julie Veach, Chief, Wireline Competition Bureau and Mr. Jonathan Sallet, General Counsel, FCC, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (Jan. 15, 2014).

⁸⁵ *5/15/2013 Update*, NPAC RFI/RFP, North American Portability Management LLC, available at https://www.napmlc.org/pages/npacrfp/npac_rfp.aspx (last visited Feb. 24, 2014).

⁸⁶ Ex Parte Letter from John T. Nakahata, Madeleine V. Findley and Jason A. Carey, Counsel to Telcordia Technologies, Inc., to Julie Veach, Chief, Wireline Competition Bureau and Mr. Jonathan Sallet, General Counsel, FCC, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (Feb. 6, 2014) (“Telcordia Feb. 6, 2014 Ex Parte”).

⁸⁷ In a November 6, 2012 *ex parte* filing, Neustar flatly rejected the need to mandate the solicitation of multiple best-and-final offers, stating that, “as Neustar has explained

public information about its competitive standing and price relative to other bidders.⁸⁸ To preserve the integrity of the competitive process, LNPA selection should be made based on existing BAFOs. Neustar has already had two opportunities to submit its most competitive proposal; it has no right to a third bite at the apple.

In any event, the Chair of the Wireline Competition Bureau has already directed the NANC to “review and evaluate all claims of potential unfairness” related to the LNPA selection process.⁸⁹ Accordingly, the NANC is reviewing the very assertions and allegations that Neustar has made in its petition, and Neustar’s supposed concerns will be addressed and resolved by that investigation. No other action is required.

VI. THE COMMISSION SHOULD DISMISS OR ALTERNATIVELY DENY NEUSTAR’S PETITION AND PROCEED TO AN AWARD.

Neustar’s Petition is procedurally defective because it seeks reconsideration or Commission review long after the time for such petitions or applications expired. The Petition is not a proper Petition for Declaratory Ruling. Accordingly, it must be dismissed.

In any event, Neustar’s newly minted objections are nearly all waived and meritless. The RFP covers the functions that Neustar says it should cover, including adequately providing for the IP transition. Indeed, Neustar’s suggestion that the RFP should specify the role of the NPAC in routing IP-to-IP communications would itself be inappropriate, as it would prejudice matters being considered by the Commission in other dockets.

previously, in a confidential RFP process, there is no reason to mandate the solicitation of multiple best-and-final offers.” Neustar Nov. 6, 2012 Ex Parte at 5 n.11.

⁸⁸ See Telcordia Feb. 6, 2014 Ex Parte.

⁸⁹ Veach Feb. 11, 2014 Letter at 2.

Finally, with respect to Neustar's allegations that the procurement process has been run unfairly, the Bureau's February 15, 2014 letter to NANC already addresses that.

Accordingly, if the Commission does not dismiss Neustar's Petition, the Petition should be denied.

Respectfully submitted,



Jason A. Carey
Erin B. Sheppard
MCKENNA LONG & ALDRIDGE LLP
1900 K St., N.W.
Washington, D.C. 20006

John T. Nakahata
Madeleine V. Findley
Anne K. Langer
Kristine Laudadio Devine
WILTSHIRE & GRANNIS LLP
1200 18th Street, N.W. Suite 1200
Washington, D.C. 20036
(202) 730-1320
jnakahata@wiltshiregrannis.com

February 24, 2014