BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of:	
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

COMMENTS OF THE LNP ALLIANCE ON NEUSTAR'S PETITION FOR DECLARATORY RULING

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 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

COMMENTS OF THE LNP ALLIANCE ON NEUSTAR'S PETITION FOR DECLARATORY RULING

The LNP Alliance ("LNP Alliance" or "Alliance")[1] hereby submits these comments on the Petition for Declaratory Ruling filed by Neustar on October 22, 2014.[2] The LNP Alliance shares many of Neustar's concerns regarding the process by which the Selection Working Group ("SWG") deliberated and questions whether the process meets the standards of the Federal Advisory Committee Act ("FACA").[3] In order to ensure that the FACA requirements are met,

[1]The LNP Alliance is a consortium of small and medium ("S/M") providers that currently consists of Comspan Communications, Inc., Telnet Worldwide, Inc., the Northwest Telecommunications Association ("NWTA"), and the Michigan Internet and Telecommunications Alliance ("MITA"). The LNP Alliance is focused on ensuring that the LNPA selection process takes into account the concerns of its S/M provider members and other similarly situated providers.
[2] Neustar Petition for Declaratory, WC Docket No. 09-109, CC Docket No. 95-116 (October 22, 2014) ("Neustar Petition").
[3] 5 U.S.C. app. 2, § 1 *et seq.*

the Commission should extend the existing Neustar contract by two years and reopen the LNPA selection process such that it can be conducted in a manner that ensure compliance with FACA.

I. INTRODUCTION AND SUMMARY

The LNP Alliance and its members have expressed concerns about transparency and balanced membership for some time. In a letter filed in these proceedings on February 17, 2014, the Michigan Internet & Telecommunications Alliance ("MITA"), an LNP Alliance member, stated:

> Although thousands of providers depend on number portability as a core component of the business, we are concerned that the local number portability administrator selection process has been a closed process involving a handful of carrier. **We urge you to make this an open and transparent process.** We would like the opportunity to review and comment upon any analysis that was done regarding the impact of this selection process on smaller carriers and their customers before any recommendation on selection is made to the FCC. Further, we would like assurances that whatever savings flow to each service provider will more than offset the transition costs that it will be forced to absorb.[4]

From reviewing the record and Neustar's Petition, it is clear that the process has not been sufficiently transparent, open, and inclusive. The LNP Alliance is particularly concerned that the membership of the Selection Working Group ("SWG") was not proactively broadened to include smaller carriers, as was the case in 1997 when the first Selection Working Group ("1997 SWG") was formed. As detailed in the affidavit of David J. Malfara, Sr. ("Malfara Affidavit"), attached hereto as Exhibit A, Mr. Malfara represented smaller carriers, including COMPTEL and the Professional Association for Customer Engagement ("PACE"), on the 1997 SWG and witnessed first-hand a more open, transparent, and inclusive process that gave smaller carriers a seat at every stage of the decision making process. Unlike the current process, smaller carriers were not

[4] Letter from John R. Liskey, Executive Director , Michigan Internet & Telecommunications Alliance, to Ms. Julie Veach, Chief, Wireline Competition Bureau, CC Docket No. 95-116, WC DocketNo. 09-109, at 2 (Feb. 17, 2014) (emphasis in original).

brought in after the fact when critical decisions had already been made, nor were they excluded from confidential meetings because there was a concerted effort to ensure that smaller carriers were members of and actively participated in the SWG. The failure to include smaller carriers was a violation of FACA, and the Commission should rectify that by extending the Neustar contract by two years, forming a new, more inclusive SWG, and reopening the LNPA selection process.

In its Opposition to the Petition,[5] Telcordia defends the process with an odd assortment of arguments, discussed in detail below, but Telcordia's main argument seems to be that there was no prejudice to Neustar or any other party by the failure to include smaller carriers on the SWG. Nothing could be further than the truth. The LNPA selection process is tainted by actual and perceived bias.[6] Five of the ten industry representatives, all representing the largest telecom companies, have strong ties to the wireless industry and the principal neutrality issue raised after the selection was that Telcordia's parent company, Ericsson, is a major telecommunications equipment manufacturer that is very closely aligned with the wireless telecommunications industry segment.[7] Moreover, as detailed below, smaller carriers and other entities have been outspoken concerning the failure to consider the particular needs of niche service providers and the dearth, even now, of information concerning the cost of the transition to smaller carriers.

In light of the SWG's failure to comply with FACA, the Commission cannot rely on the SWG's recommendation, nor can it proceed without relying upon it.[8] The Commission should

[5] Opposition of Telcordia Technologies, Inc., d/b/a iconectiv to Neustar Petition, CC Docket No. 95-116; WC Docket No. 09-109, at 8 (July 25, 2014)("Telcordia Opposition").
[6] *See Lorillard, Inc. v. U.S. Food & Drug Admin*., No. 11-440 (RJL), 2014 WL 3585883, at *15 & n.24 (D.D.C., July 21, 2014). *See also* Neustar Petition at 50.
[7] 47 C.F.R. 52.21(k). The SWG included representatives from AT&T, Verizon, T-Mobile, Sprint, and USTelecom.
[8] *See, e.g., In the Matter of Admin. of the N. Am. Numbering Plan,* 11 F.C.C. Rcd. 2588, at 2611, ¶ 53 (1995).

therefore extend the Neustar contract for two years and conduct the LNPA selection process in a manner that complies with FACA and other provisions of federal law.

II. THE SWG DID NOT COMPLY WITH THE FACA REQUIREMENTS CONCERNING DISCLOSURE OF RECORDS, OPEN MEETINGS, AND BALANCED MEMBERSHIP

FACA requires that a federal advisory committee such as the SWG maintain and disclose records, conduct open meetings, and have a balanced membership. The Neustar Petition cites to a variety of examples where the SWG did not maintain and disclose records[9] and did not conduct open meetings.[10] The LNP Alliance is particularly concerned with and will focus these comments on the lack of balance in the SWG's membership, particularly given that the recommended LNPA, Telcordia, is the subsidiary of Ericsson, a major manufacturer of wireless equipment closely aligned with the wireless industry segment.

The current SWG does not have a balanced membership representative of small, medium, and large carriers. While the 1997 SWG had 29 separate companies participating, the current SWG has only 9 corporate participants.[11] The 1997 SWG had three trade associations participating, including COMPTEL, which represents competitive carriers, including small and medium-sized competitors, while the current SWG has only one trade association, USTelecom, which represents the largest incumbent carriers.[12] The smallest corporate members on the current SWG are Level 3 and XO, both successful competitive carriers. But Level 3 had 2013 revenues of $6.3B[13] and XO has annual revenues of $1.5B.[14] There is no industry participant on

[9] Neustar Petition at 44.
[10] *Id*. at 37–38.
[11] *Id*. at 12.
[12] *Id*.
[13] *Level 3 Communications, Inc.*, BUSINESSWEEK.COM, http://investing.businessweek.com/research/stocks/earnings/earnings.asp?ticker=LVLT (last visited November 21, 2014).
[14] *XO Communications Company Fact Sheet*, XO.COM, http://www.xo.com/resources/service-overviews/xo-communications-company-fact-sheet/#.VG_O4Y10zIU (last visited November 21, 2014).

the current SWG with annual revenues of less than $1.5B on the current SWG and no voice for much smaller companies, such as those in the LNP Alliance, with a $100M, $20M, or less than a $1M in annual revenues. Small companies such as those in the LNP Alliance have unique interests. For example, as discussed below, some have unique, specialized numbering needs upon which their businesses rely, and small carriers are more likely to be impacted by changes in the number porting cost structure. These interests were not represented on the current SWG.

Of the ten SWG members representing corporations, five—AT&T, Verizon, T-Mobile, Sprint, and USTelecom—have close ties to the wireless industry. By contrast, because the 1997 SWG had 38 as opposed to just 13 total participants on the current SWG, it was much more difficult for a bloc of similarly situated large companies to hold sway. COMPTEL, representing competitive carriers of all sizes, was not a member of the SWG, as it was in 1997. Moreover, there was only one COMPTEL member on the SWG during most of the SWG deliberations,[15] but that was Sprint, the nation's third largest wireless provider. Given that the LNP Alliance and others have raised issues about Ericsson's and Telcordia's alignment with the wireless industry segment,[16] the lack of balanced membership resulted in both actual and perceived bias on the SWG, both in terms of a lack of attention to the issues of smaller entities and a bias in favor of the wireless industry segment.[17]

The lack of attention to the issues of smaller carriers is evident from the comments, letters, and other filings of the LNP Alliance and other carriers once they were permitted to participate in the process. Smaller carriers were only permitted to comment on the SWG's

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[15] XO joined COMPTEL in 2014, but was not a COMPTEL member during most of the SWG process. *See COMPTEL Gains Momentum in Fiber, Cloud, Broadband and Wireless Sectors with Addition of 16 New Members in First Half of 2014 - XO Communications Joins Board of Directors*, COMPTEL.ORG, http://www.comptel.org/Files/filings/2014/06-02-14_Member_Momentum.pdf (last visited November 21, 2014).
[16] *See* Comments of LNP Alliance, WC Docket No. 07-149, CC Docket No. 95-116; WC Docket No. 09-109 (July 25, 2014)("LNP Alliance Comments").
[17] *See Lorillard*, 2014 WL 3585883, at *15 & n. 24.

findings ***after*** the SWG's critical selection recommendation had already been made. There is no question that being brought into the process after the SWG had already made its selection put smaller carriers at a distinct disadvantage in terms of influencing the decision making process. Telcordia's suggestion that all carriers had ample opportunity to comment by virtue of their participation ***after*** the critical selection recommendation was already made therefore rings hollow.[18]

Not surprisingly, now that smaller carriers and other entities have an opportunity to participate, they have expressed a wide variety of concerns that were not given voice because the SWG membership was not balanced, in violation of FACA.[19] The LNP Alliance, representing smaller companies like Comspan and Telnet Worldwide, has repeatedly addressed the fact that Telcordia, as currently structured, does not meet the neutrality requirements of the federal rules.[20] The LNP Alliance has already addressed the very serious concern that the requirements of the LNPA post-IP Transition are not clear at this stage, given that there are a number of working groups and task forces that are in the process of finalizing the structure of local number portability post-IP Transition.[21] And the LNP Alliance, as well as several other participants, have raised the issue that there is inadequate time to accommodate all the steps necessary to guarantee a smooth, functional transition if the LNPA is to change in 2015.

A number of other small entities have likewise weighed in to raise issues that were not addressed by the SWG, and that will clearly require more time to receive adequate attention. These include small companies, but also a wide variety of telecommunications niche entities and critical public entities, reflecting the complexity of the industry, whose interests might well have

[18] Telcordia Opposition at 10-12.
[19] 5 U.S.C. app. 2, § 5(b)(2).
[20] LNP Alliance Comments at 6-8.
[21] *Id*. at 17-23.

been represented had the SWG membership been expanded to the broader membership exhibited in 1997:

- Telecommunications Systems, Inc., relies on tools, processes and interfaces currently provided by Neustar with respect to 9-1-1 services in support of wireless and VoIP carriers and numbering management services in support of Next Generation 9-1-1 deployments. TCS asked that the LNP Transition be sufficiently detailed and deliberate that the processes and tools it has developed with Neustar can be replicated;[22]

- The Professional Association for Customer Engagement: needs to ensure that the Association can distinguish wireline from wireless phone numbers to assist its members in ensuring compliance with the Telephone Consumer Protection Act ("TCPA").[23]

- NENA: The 9-1-1 Association: supporting an extension of the contract of the current LNPA for two years to ensure the stability of the numbering platform during the IP transition.[24]

- Intrado: requesting that the Commission ensure that any transition plan does not adversely affect 9-1-1 data management and/or timely resolution of potential LNP-related errors.[25]

- Telepacific Communications and HyperCube Telecom, LLC: calling for greater transparency in the process and a one- to two-year transition period to reduce the likelihood of consumer impacts.[26]

- Federal Bureau of Investigation, the Drug Enforcement Administration, the United States Secret Service, and U.S. Immigration and Customs Enforcement: expressing concern regarding potential interference by individuals or entities located outside the U.S. as a result of foreign influence over the LNPA.[27]

- International Association of Chiefs of Police and National Sheriffs'

[22] Comments of Telecommunications Systems, Inc., CC Docket No. 95-116; WC Docket No. 09-109 (August 22, 2014).
[23] Comments of Professional Association for Customer Engagement, CC Docket No. 95-116; WC Docket No. 09-109 (November 11, 2014).
[24] Letter from Brian Fontes, CEO, NENA: The 9-1-1 Association, to Ms. Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 95-116, WC Docket No. 09-109, at 2 (Aug. 22, 2014).
[25] Comments of Intrado, Inc., WC Docket No. 09-109, CC Docket No. 95-116 at 2-4 (July 24, 2014).
[26] U.S. TelePacific Corp. d/b/a TelePacific Communications and Hyper-Cube Telecom, LLC, CC Docket No. 95-116; WC Docket No. 09-109 (July 25, 2014).
[27] Reply Comments of the Federal Bureau of Investigation, the Drug Enforcement Administration, the United States Secret Service, and U.S. Immigration and Customs Enforcement, CC Docket No. 95-116, WC Docket No. 09-109 (August 11, 2014).

Organization: emphasizing the highly sensitive nature of the services that the LNPA provides for the local, tribal, state and federal law enforcement agencies.[28]

These examples demonstrate that there are carriers and other entities under $1B in revenues, or much smaller, that have expressed concerns about the transparency and the balance of the SWG process. There were also critical public entities that were not included in the process. While the LNP Alliance is not suggesting that every niche concern could have been addressed, there was a distinct lack of participation from both certain industry market segments (small carriers) and groups representing particular areas of expertise (9-1-1) that would have been represented had there been FACA compliance, including a balanced SWG and a transparent process. The comments filed by these and other entities are the evidence that there was an actual bias and prejudicial impact across many corners of the industry as a result of the pinched and skewed composition of the SWG.

III. THE 1997 SWG REFLECTED A BALANCED MEMBERSHIP AND A TRANSPARENT PROCESS IN ORDER TO COMPLY WITH FACA

The 1997 SWG was composed of a much broader variety of participants, including smaller carriers, and established a much more transparent and open process from the outset of the process. The inclusion of many smaller, competitive carriers was critical then as now to ensure that Local Number Portability was implemented in a competitive neutral manner. The LNP Alliance provides the Affidavit of David J. Malfara, Sr., ("Malfara Affidavit"), who represented both COMPTEL and Pennsylvania Alternative Communications, Inc. ("PACE"), on the 1997 SWG to demonstrate the manner in which the 1997 SWG reflected the earmarks of a FACA-compliant committee.[29] The correspondence and composition of the 1997 SWG reflect a FACA-

[28] Joint Reply Comments of the International Association of Chiefs of Police and National Sheriffs' Organization, CC Docket No. 95-116, WC Docket No. 09-109 at 2 (August 20, 2014).
[29] Malfara Affidavit.

compliant transparent process and a balanced membership in a manner that the current SWG does not.

Mr. Malfara indicates that the 1997 SWG included his company, Pace, but also other smaller carriers and diverse interests:

> The SWG membership represented many small and medium sized carriers and entities that do not have the massive corporate resources of AT&T, Verizon or Comcast. Pace, for example, operated with annual revenues in the $50 million range and COMPTEL's membership included hundreds of carriers of significantly smaller size that were equally represented by me on the SWG. Other companies as well, such as Interstate Fibernet and Winstar, individually represented smaller carrier concerns. This broad participation provided representation for a wide variety of interests. It ensured that small carrier needs and cost structures were considered at every stage of the process – before, during and after LNPA selection. [30]

From the outset, the 1997 SWG made a firm commitment to an open process. As described by Mr. Malfara: "The mission of the SWG, as it pertained to the exceedingly open and transparent process, including publication of documents and attendance at meetings, was described in detail in the 1997 SWG's report."[31] The 1997 SWG Report, as quoted in the Malfara Affidavit, emphasized the need for inclusive participation and which stated (emphasis added):

2.3 Composition

> 2.*3.1 The LNPA Selection Working Group is open to all concerned parties and is representative of all segments of the telecommunications industry. A list of the member companies and associations, as well as the representatives that generally attended meetings, is contained in Appendix A. Also, members of the FCC staff attended most of the meetings held by the LNPA Selection Working Group.*

[30] *Id*. at ¶ 16.
[31] *Id*. at 13, citing *North American Numbering Council Local Number Portability Administration Selection Working Group Report*, dated April 25, 1997, attached to Malfara Affidavit as Exhibit DJM-1.

> *2.3.2 The LNPA Selection Working Group oversees two (2) task forces that are assigned various functions. These groups are the LNPA Architecture Task Force and the LNPA Technical & Operational Requirements Task Force. Both Task Forces also have an open membership policy and are representative of the total telecommunications industry. A list of the member companies and associations, as well as the representatives that generally attend meetings, is contained in Appendix A. In addition, members of the FCC staff occasionally attend the meetings of the two (2) Task Forces.*

According to Mr. Malfara, the meeting notes from the outset of the 1997 SWG reflect a commitment to openness and balanced participation: "This operating environment is also quite evident in the meeting notes from the first SWG meeting, held in Washington, D.C. on November 8, 1996, at which I was in attendance. Two follow-up emails[32] containing comments about the meeting notes and the notes themselves further demonstrate the open exchange of ideas and 'ground rules' developed by the SWG." The notes from that same meeting reflect a firm commitment to consensus and entity participation:

> *One voice/input per entity was discussed and will be considered further at the Steering Group Meeting. Alan Hasselwander related the Steering Group's discussions regarding the number of participants from any one entity and stated that a strict rule is not yet being enforced since participation and contributions from a broad industry perspective are valuable.*[33]

Unlike the 1997 SWG process, the current SWG has not exhibited the same hallmarks of transparency and balanced participation. Mr. Malfara has observed the current process from the outside, as he has not been a member of the current SWG. Like many outside observers, Mr. Malfara has indicated that the current SWG—which also does not include a single VoIP provider—lacks the commitment to openness and balanced membership that were the hallmarks of the 1997 SWG on which he participated:

> The concerns raised by the LNP Alliance and others after the most recent selection demonstrates that small carriers' concerns were NOT fully considered.

[32] *See* Malfara Affidavit, Exhibits DJM-2 and DJM-3.
[33] Malfara Affidavit at ¶ 14.

> Many of these entities are not even aware of the process, or of its implications, since they may be VoIP providers who are just now beginning to see the benefits of obtaining their own numbering resources. In consideration of the PSTN's impending transition to IP, these entities may very well represent an industry faction that comprises the bulk of innovation over the term of the next LNPA contract, yet NONE of them participated in the recent SWG process. These entities, and their interests, should be *central* to this process.[34]

The LNP Alliance has also cautioned the Commission that there is a particular need for transparency and openness because of the simultaneous transition from the PSTN to IP. As noted in the Malfara Affidavit, the "impending transition of the PSTN to IP raises the degree of complexity because of the expansion of issues to consider in the selection process. Such an environment begs a robust catalogue of knowledge, enriched by the input of all industry factions upon which an informed decision would depend, and in anticipation of the process of LNPA selection."[35] The Commission can ensure that the current SWG process complies with FACA and takes into account these added complexities by extending the Neustar contract by two years and reopening the bid process in a manner that fully complies with FACA.

IV. TELCORDIA CANNOT JUSTIFY THE PROCESS FOLLOWED WHICH WAS PREJUDICIAL TO SMALLER CARRIERS

Telcordia's Opposition to the Neustar Petition essentially argues that if the SWG did violate FACA, the violations were "highly technical,"[36] and there was no prejudice to Neustar or any other carrier by the FACA shortcomings. Yet the record in this proceeding clearly demonstrates that the FACA violations were material and substantive, and that they had a direct prejudicial impact on smaller carriers.

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[34] *Id*. at ¶ 16.
[35] *Id*. at ¶ 18.
[36] Telcordia Opposition at 1.

Telcordia makes several arguments that effectively argue that the SWG did not need to comply with federal legal requirements. Telcordia argues that FACA does not apply because Neustar never previously raised its requirements as an issue.[37] FACA is designed to protect a broad array of carriers and the fact that one party has not raised the issue, does not mean that FACA does not apply. Moreover, as noted above, the fact is that a number of carriers and other parties, including LNP Alliance member MITA, have raised issues of transparency throughout this process.

Telcordia also argues that giving parties to comment on the SWG's output after the critical LNPA recommendation was completed can somehow cure the failure to provide for balanced membership throughout the process.[38] But the failure to keep the process open and the membership balanced throughout the SWG process cannot be cured by *post hoc* comment. Moreover, it is clear from non-member comments that many issues, including neutrality and the IP Transition, were not adequately addressed by the SWG. Telcordia even argues that the SWG membership need not be balanced, as long as the "membership pool—all NANC members" is balanced.[39] The mere opportunity to participate is not adequate to meet FACA balanced membership requirements, and there is no record that any meaningful or concerted effort was made to ensure a balanced membership compliant with FACA.

In the end, Telcordia argues that there was no prejudice in the failure to make the LNPA recommendation through a FACA-compliant committee. But the record demonstrates otherwise. As the LNP Alliance has demonstrated, there was very little consideration given to the costs that smaller carriers will bear—a critical issue that is still from clarified. The selection of Ericsson affiliate Telcordia by carriers closely tied to the wireless industry raises serious concerns, and

[37] *Id*. at 1-2.
[38] *Id*. at 8.
[39] *Id*. at 6 & n.16.

inadequate consideration was given to the IP Transition and the complexities of trying to complete the selection process before post-IP Transition LNPA requirements have even been established. These are all issues that will have an acute bearing on smaller carriers like the members of the LNP Alliance. As detailed above, a number of other disparate parties, representing other corners of the industry, have also publicly noted that their concerns have not been adequately considered in this closed process. There has clearly been prejudice to the LNP Alliance, as well as these parties by virtue of their limited access to, and at times exclusion from, the SWG's LNPA selection process.

V. CONCLUSION

Only seven months remain until the Neustar contract expires and it is clear from a broad cross-section of commenters that there is a considerable amount of further review and analysis to be completed. Although we all take a seamless and competitively neutral LNP process for granted, there is significant potential that LNP will not function smoothly if the selection process and transition, if any, is rushed or short-circuited in any manner. The LNP Alliance supports the Neustar Petition and recommends that the Commission grant the Petition, extend the Neustar contract by two years, and reopen the selection process to be conducted in a manner that is FACA compliant.

Respectfully Submitted,

/s/

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EXHIBIT A

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AFFIDAVIT OF
DAVID J. MALFARA, SR.

STATE OF FLORIDA)
)
COUNTY OF OSCEOLA)

David J. Malfara, Sr., being duly sworn, deposes and says:

1. I reside at 7712 Linkside Loop, Reunion, Florida 34747-6767. I make this affidavit in support of the comments of the LNP Alliance on the Petition for Declaratory Ruling filed by Neustar on October 22, 2014.

2. I am the President and Chief Executive Officer of ETC Group, LLC. ETC Group, LLC is a business management and technology consulting company which specializes in advising telecommunications service providers on issues involving the creation, analysis, design, deployment, management and operation of business models, made possible by emerging technologies, within the context of service provider operations. I am responsible for overseeing and, in many cases, conducting those activities for the company's service provider clients and a small number of municipal and enterprise clients.

3. For more than 35 years I have been an active participant in the continuing evolution of the Telecommunications Industry. Immediately prior to founding ETC Group, LLC I served as President/Chief Executive Officer of Remi Communications Holdings, LLC and its subsidiaries, where I also served as Chief Technology Officer. Remi was a regional communication service provider operating in the northeast U.S. and serving commercial customers with broadband and telecommunication services. I also served as a member of the Management Committee of the Pew Consulting Group, a Philadelphia-based consulting firm, specializing in municipal broadband networks.

4. I was the founding President of Z-Tel Network Services, Inc, a Tampa based national service provider which became the largest consumer based Competitive Local Exchange Carrier (CLEC) in the United States; at the time of my departure, Z-Tel had annualized revenue of nearly $300 Million and more than 340,000 subscribers. I have also held engineering and management positions at National Computer Corporation, Honeywell Information Systems, and GTE Telenet, where I designed and developed large-scale packet switched global networks for Fortune 50 companies.

5. In 1983, I formed Pennsylvania Alternative Communications, Inc. ("Pace"), a nationwide long distance telephone company later sold to LCI International (Qwest/CenturyLink). In 1995, I co-founded the wholly-owned Pace subsidiary, Pace Network Services, providing wholesale traffic and SS7 signaling services to telecommunication carriers. Pace Network Services became the largest supplier of SS7 connectivity to the interexchange carrier community, with more than 100 carrier-customers prior to its sale to ICG Telecom Group, Inc. in 1996.

6. I currently participate in industry standards development as a

representative to ATIS, the ATIS Industry Numbering Council, the ATIS/SIP Forum joint Internet Protocol Network-to-Network Interface Task Force, and the SIP Forum, among others.

7. I was a founding member of the North American Numbering Council's Local Number Portability Administration Selection Working Group ("SWG") as a dual representative of my company of the time (Pace) and of COMPTEL. The SWG is the body that makes the decisions and recommendations that form the basis of the regulatory orders issued by the FCC pertaining to LNP. The SWG is also responsible for the business functionality of the national LNP system and how all Service Providers (i.e. wireline, wireless and VoIP) inter-operate with it. Therefore, the activity of the SWG has a direct bearing on the processes and systems that each Service Provider uses to participate in LNP, including the assignment, application and use of Location Routing Number ("LRN") and other NPAC data elements.

8. I am currently a Council Member of Gerson Lehrman Group, Inc. (GLG) and provide subject-matter expertise on matters pertaining to the telecommunications and broadband industries to GLG clients, which include most of the largest consulting companies and investment banks on the globe. I also sit on the Executive Advisory board of multiple broadband service providers in the United States.

9. I served for more than 10 years as a Director of COMPTEL, and for five years as a member of its Executive Committee. Based in Washington, D.C., COMPTEL is the leading industry association representing competitive communications service providers and their supplier partners. COMPTEL advances its members' interests, in part, through policy advocacy before Congress, the Federal Communications Commission, and the courts. I served as the founding chair of COMPTEL's Technology Task Force and was also a member of the

COMPTEL legislative and regulatory committees during this time.

10. I am a senior member of the Institute of Electrical and Electronics Engineers, the IEEE Communications Society, the IEEE Information Theory Society and the IEEE Standards Association. I frequently represent the interests of the competitive communications industry in discussions relative to technological evolution, and its impact on service provider business models and regulatory oversight, as a speaker, author and guest lecturer.

11. I also have extensive experience in relevant network signaling practices and protocols. These include SS7 (ISUP & TCAP), ISDN (PRI); Internet Protocol (IP) and other packet-based transport protocols; Session Initiation Protocol (SIP), and others in the VoIP suite of protocols (*i.e.* RTP, RTCP, SDP, etc.).

12. My purpose in submitting this affidavit is to call attention to the way in which the original SWG sought, in anticipation of the LNPA selection process, to enrich the catalogue of knowledge upon which that process would depend. As this affidavit will demonstrate, this goal was accomplished only through a transparent process which encouraged the submission of ideas, data, experiences, strategies, operational and financial requirements and limitations, technological advancements and other information from every faction of the industry, including government, vendors, wireless carriers, cable providers, subscribers and not only large, but also medium and small wireline carriers.

13. The mission of the SWG, as it pertained to the exceedingly open and transparent process, including publication of documents and attendance at meetings, was described in detail in the 1997 SWG's report[1], which stated (emphasis added):

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[1] See *North American Numbering Council Local Number Portability Administration Selection Working Group Report*, dated April 25, 1997, attached hereto as Exhibit DJM-1.

2.3 Composition

2.3.1 <u>The LNPA Selection Working Group is open to all concerned parties and is representative of all segments of the telecommunications industry</u>. A list of the member companies and associations, as well as the representatives that generally attended meetings, is contained in Appendix A. Also, members of the FCC staff attended most of the meetings held by the LNPA Selection Working Group.

2.3.2 The LNPA Selection Working Group oversees two (2) task forces that are assigned various functions. These groups are the LNPA Architecture Task Force and the LNPA Technical & Operational Requirements Task Force. <u>Both Task Forces also have an open membership policy and are representative of the total telecommunications industry.</u> A list of the member companies and associations, as well as the representatives that generally attend meetings, is contained in Appendix A. In addition, members of the FCC staff occasionally attend the meetings of the two (2) Task Forces.

14. This operating environment is also quite evident in the meeting notes from the first SWG meeting, held in Washington, DC on November 8, 1996, at which I was in attendance. Two follow-up emails[2] containing comments about the meeting notes and the notes themselves further demonstrate the open exchange of ideas and "ground rules" developed by the SWG. The notes reflect the following meeting discussion regarding consensus & entity participation:

One voice/input per entity was discussed and will be considered further at the Steering Group Meeting. Alan Hasselwander related the Steering Group's discussions regarding the number of participants from any one entity and stated that a strict rule is not yet being enforced since participation and contributions from a broad industry perspective are valuable.

15. The industry interaction, consensus and cooperation evident in the SWG activities were responsible for the highly successful LNP processes that we take for granted today.

16. The SWG membership represented many small and medium sized carriers and entities that do not have the massive corporate resources of AT&T, Verizon or Comcast. Pace, for example, operated with annual revenues in the $50 million range and COMPTEL's membership included hundreds of carriers of significantly smaller size that were equally represented by me on the SWG. Other companies as well, such as Interstate Fibernet and Winstar, individually represented smaller carrier concerns. This broad participation provided representation for a wide variety of interests. It ensured that small carrier needs and cost structures were considered at every stage of the process – before, during and after LNPA selection. The concerns raised by the LNP Alliance and others after the most recent SWG selection process demonstrates that small carriers' concerns were NOT fully considered. Many of these entities are not even aware of the process, or of its implications, since they may be VoIP providers who are just now beginning to recognize and assess the benefits of obtaining their own numbering resources. In consideration of the PSTN's impending transition to IP, these entities may very well represent an industry faction that comprises the bulk of innovation over the term of the next LNPA contract, yet NONE of them participated in the recent SWG process. These entities, and their interests, should be *central* to this process.

17. Further, the selection of a wireless equipment manufacturer, Ericsson, also suggests that the recent selection process may have labored under an undue bias toward wireless interests. At the very least, this selection would indicate a divergence from a central tenet of the original SWG, as discussed above.

18. During the next contract period for the Local Number Portability Administrator we will face no less of a challenge in technology, business processes and

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[2] See Exhibits DJM-2 and DJM-3 attached hereto.

interoperability than we faced in the original SWG. In fact, it is my opinion that the impending transition of the PSTN to IP raises the degree of complexity because of the expansion of issues to consider in the selection process. Such an environment begs a robust catalogue of knowledge, enriched by the input of all industry factions upon which an informed decision would depend, and in anticipation of the process of LNPA selection.

David J. Malfara, Sr.

Sworn to before me this 21st day of November, 2014.

Notary Public

NORMAN RUSCETTE
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE120774
Expires 12/7/2015

Exhibit

DJM-1