Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petitions of Neustar, Inc. for	)	
Declaratory Rulings	)	
	)	
Petition of Telcordia Technologies, Inc.	)	
To Reform or Strike Amendment 70, To	)	WC Docket No. 09-109
Institute a Competitive Bidding for Number	)	
Portability Administration, and To End the	)	
LLC's Interim Role in Number Portability	)	
Administration Contract Management	)	
	)	
Telephone Number Portability	)	CC Docket No. 95-116

REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

Michael F. Altschul
Senior Vice President & General Counsel
CTIA – The Wireless Association ®
1400 16th Street, NW, Suite 600
Washington, D.C. 20036
202-785-0081

December 3, 2014

TABLE OF CONTENTS

I. Introduction and Summary 2

II. Neustar's February 12 Petition Provides No Reason for Delay 2

III. Neustar's October 22 Petition Alleging Violations of FACA Likewise Provides No Reason for Delay..... 6

A. The SWG Acted Consistently With FACA 6

B. Even if Neustar Could Show Any FACA Violation, The Remedy It Seeks is Wholly Unjustified.....8

IV. Conclusion 10

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petitions of Neustar, Inc. for Declaratory Rulings	)	
	)	
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

REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

CTIA – The Wireless Association® ("CTIA") submits these Reply Comments in response to the Wireline Competition Bureau's November 7, 2014 *Public Notice* seeking comments on two petitions for declaratory ruling filed by Neustar, Inc. ("Neustar") in these proceedings. As the *Public Notice* explains, the more recent of these petitions, filed October 22, 2014 (the "October 22 petition") asks the Commission to "redress" asserted "violations of the Federal Advisory Committee Act ("FACA")," while Neustar's earlier petition, filed February 12, 2014 (the "February 12 petition"), asks the Commission to effectively reopen the Local Number Portability Administration ("LNPA") selection process that has been the subject of these proceedings for over five years.[1]

[1] *Public Notice*, DA 14-1629 (rel. Nov. 7, 2014).

I. INTRODUCTION AND SUMMARY

The practical impact of granting either of Neustar's petitions would be to substantially delay or derail entirely the LNPA selection process, to the detriment of the public—while only one party (Neustar) stands to gain**.** The public interest demands otherwise. As reflected in the prior comments, reply comments and recent *ex parte* presentations of CTIA and USTelecom,[2] a broad array of industry stakeholders has demonstrated the urgent need for Commission action to select a new LNPA. Simply put, further inaction will needlessly cost users of the LNP database, and ultimately all U.S. telephone consumers, scores or even hundreds of millions of dollars. Indeed, ***each day*** of delay in implementing a new LNPA contract beyond its scheduled June 2015 expiration will impose more than ***$1 million*** of unnecessary costs on consumers.[3] Neither of Neustar's petitions provides any sound reason for further delay.

II. NEUSTAR'S FEBRUARY 12 PETITION PROVIDES NO REASON FOR DELAY

Although it is styled as a Petition for Declaratory Ruling, Neustar's February 12 petition is in reality a disguised—and untimely—petition for reconsideration of orders that *Neustar itself endorsed.*

A petition for declaratory ruling is appropriate to ask the Commission to "terminat[e] a controversy or remov[e] uncertainty."[4] Neustar's February 12 Petition, however, does not point to any controversy or issue of ambiguity in Commission rules or orders. Instead, it asks the

---

[2] *See* Joint Comments of CTIA & USTelecom, filed July 25, 2014; Joint Reply Comments of CTIA & USTelecom, filed Aug. 8, 2014; *ex parte* letters of CTIA *et al.*, filed Nov. 20, 2014.

[3] As CTIA/USTelecom's July 25, 2014 comments observed, the current LNPA contract includes a price escalation clause (of 6.5% above a base amount of more than $440 million); thus, any extension of the current contract beyond its scheduled June 2015 expiration will automatically trigger that clause, at a cost of over ***$40 million per month***. CTIA/USTelecom Comments at 19-20. Neustar's 2013 annual report confirms that under fee increases and escalation provisions in the current LNPA contract, the cost of the LNPA contract has risen dramatically in each of the past several years, from $374.4 million in 2011 to $446.4 million in 2013, and will increase again by a similar amount in 2014 and the first half of 2015 before the existing LNPA contract expires. *Id.* at 19. *See* Neustar SEC Form 10-K for fiscal year 2013, at pp. 34, 38, 58.

[4] 47 C.F.R. § 1.2(a).

Commission to reopen and revise a procurement that the Wireline Bureau had approved and Neustar strongly supported. Neustar is not "uncertain" about the LNPA selection process and procedures it previously supported; instead, it "merely disagree[s] with them"[5]—or, more accurately, it belatedly disagrees with their result. As the Commission has found, however, "[t]hat third parties may disagree with a Bureau decision does not render it a 'controversy' 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."[6] Instead, any dissatisfied 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."[7] In either case, a 30-day filing deadline applies.[8] Neustar is well beyond the 30-day deadline for filing either a petition for reconsideration or an application for review of any of the Wireline Bureau's orders that it now challenges.

Apart from its procedural infirmities, Neustar's February 12 petition lacks merit. Neustar asserts that "the existing process for selecting the next LNPA is flawed in its design and implementation."[9] That claim is not only unsubstantiated; it is also refuted by Neustar's own repeated prior endorsements of the LNPA selection criteria and process—right up until the moment that it realized that its incumbency as LNP Administrator might end. Just a few examples of these endorsements are:

---

[5] *Improving Pub. Safety Comm'ns in the 800 Mhz Band*, Order, 26 FCC Rcd 2035, 2039 ¶ 10 (2011).
[6] *Id.*
[7] *Pub. Serv. Comm'n of Md. & Md. People's Counsel Applications for Review*, 4 FCC Rcd. 4000, 4004, ¶ 30 (1989).
[8] *See* 47 C.F.R. §§ 1.106(f) and 1.115(d).
[9] Neustar February 12 petition at 1.

- "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."[10]

- "Neustar agrees with the Bureau that the Consensus Proposal is 'consistent with prior delegations of authority and Commission rules regarding LNPA selection.'"[11]

- "Neustar supports the LNPA selection process set forth by the Commission in its May 16, 2011, Order."[12]

- The "RFP process *includes appropriate opportunities for input by all constituencies*. . . Neustar supports the consensus process, and wants to ensure that it goes forward without delay . . . Neustar will win the RFP only if its proposal is judged the best."[13]

- The Bureau should "permit the RFP process to proceed under the supervision of the FoNPAC—as the *RFP Documents* anticipate."[14]

- "[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."[15]

- The RFP process 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."[16]

- "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."[17]

---

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

[11] *Id.*

[12] 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 1 (Nov. 22, 2011).

[13] Neustar *ex parte* presentation , CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (Mar. 9, 2012) (emphasis added).

[14] Neustar Sept. 13, 2012 Comments at 3.

[15] Neustar Oct. 18, 2012 *ex parte* at 3.

[16] *Id.* at 2.

[17] Neustar Oct. 23, 2012 *ex parte* at 1.

- The Commission's delegation of "the task of recommending the NPAC vendor to the NANC and NAPM, LLC, with Commission oversight . . . makes sense."[18]

- "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."[19]

Although the Commission did not previously seek formal comment on Neustar's February 12 petition, the Wireline Bureau's June 9, 2014 *Public Notice* afforded ample opportunity for input on the petition's claims. That *Public Notice*, which invited comments and reply comments on the NANC's vendor recommendation, also specifically sought comments on the underlying NANC Selection Working Group ("SWG") report, the bid documents, transcripts of meetings between the FoNPAC and the vendors, opinion letters addressing the vendors' compliance with neutrality requirements, and the investigative reports submitted by NAPM LLC and the SWG in response to a Bureau inquiry into the fairness of the process.[20]

In sum, Neustar's February 12 petition presents no sound reason for delaying Commission action on the LNPA selection—with all of the attendant costs that delay entails. The petition is procedurally defective, lacks merit, and is contradicted by Neustar's own repeated statements since the outset of these proceedings. The petition should be promptly denied.[21]

---

[18] Neustar Nov. 6, 2012 *ex parte.*

[19] Neustar Jan. 11, 2013 *ex parte*.

[20] *Public Notice*, DA 14-794 (rel. June 9, 2014).

[21] As CTIA and USTelecom previously explained, the NANC, its SWG, and the NAPM's FoNPAC all applied their expert judgment in addressing all reasonably foreseeable transition issues. *See* Joint Reply Comments of CTIA & USTelecom, filed Aug. 8, 2014, *supra* note 2, at 2-7. The Commission is fully capable of doing the same. *See id.* at 8-9. In particular, the Commission can ensure that it preserves the requisite "level of functionality and service" offered by the Number Portability Administration Center—a specific concern highlighted by Frontier. *See* Frontier Nov. 26, 2014 *ex parte.*

III. NEUSTAR'S OCTOBER 22 PETITION ALLEGING VIOLATIONS OF FACA LIKEWISE PROVIDES NO REASON FOR DELAY

In its latest petition, filed on October 22, Neustar adds a new theory to its litany of complaints about alleged procedural defects in the selection process to date: Neustar now claims that the SWG was constituted (and held meetings) in violation of the Federal Advisory Committee Act (FACA).[22] This argument for reopening proceedings fares no better than Neustar's other theories.

In a proceeding where each day of delay will cost consumers more than $1 million, Neustar's reliance on FACA as a reason for "discard[ing]"[23] more than three years of work by the SWG and starting over is not without irony. As Neustar acknowledges, the overriding purpose of FACA is to avoid "wasteful expenditures."[24] But that is exactly what Neustar's argument contemplates. In any event, Neustar's new claims lack merit.

A. The SWG Acted Consistently With FACA

As a threshold matter, the GSA's rules implementing FACA clearly establish that "the requirements of the Act . . . *do not apply* to subcommittees of advisory committees that report to a parent advisory committee and not directly to a Federal officer or agency."[25] That is exactly the case here: the SWG, a subcommittee of the NANC, reported to the NANC, and the NANC independently made its recommendation to the Commission.

---

[22] *See* 5 U.S.C. App. 2 § 1 *et. seq.*

[23] Neustar October 22 petition at 3.

[24] *Id.* at 44 (*citing Cal. Forestry Ass'n v. U.S. Forest Serv.*, 102 F.3d 609, 614 (D.C. Cir. 1996)).

[25] 41 C.F.R. § 102-3.35(a) (emphasis added); *see also* 41 C.F.R. § 102-3.145 (subcommittees are exempt from openness requirements unless recommendations will be adopted by parent committee or agency "*without further deliberations*") (emphasis added). *See also Grigsby Brandford & Co., Inc. v. United States*, 869 F. Supp. 984, 1001 (D.D.C. 1994) (noting that "the General Services Administration (GSA) regulations, which implement FACA, limit the definition of 'Advisory Committee'" under the Act). Neustar's contention that the GSA implementing regulations should be ignored (*see* Neustar October 22 petition at 30-31) is both misguided and puzzling. Whether or not the regulations would be accorded deference from a court (*see id.* at 30), the FCC assuredly has no claim to deference in interpreting FACA—which is not part of the Communications Act—much less any basis for setting aside a sister agency's interpretation of that statute.

In any event, the SWG and NANC were "fairly balanced" under FACA, as membership in the SWG was open to all interested NANC members. As CTIA previously explained, subject to confidentiality protections and conflict-of-interest rules, membership of the SWG was open to any NANC Member, NANC alternate, or technical personnel of a NANC member company, association or governmental entity.[26] Indeed, the Commission expressly required that the SWG reflect a diverse and fair balance of the NANC's constituencies, and the SWG included representatives of ILECs, CLECs, wireless carriers, and state public service commissions.[27] The membership of the NANC, in turn, represents the broadest cross-section of the U.S. telecommunications industry, with representatives from all of these constituencies plus manufacturers, consumer advocates, and telecommunications industry associations.[28] Neustar does not maintain (nor could it) that any group was improperly excluded from the SWG, nor does it suggest that the NANC or the Commission should somehow *compel* entities to join the SWG. In interpreting the "fairly balanced" requirement of FACA, courts have held that "substantial *efforts* to include members of the interested public in at least some committee meetings" is sufficient.[29] As the discussion above shows, that standard was easily satisfied here.

---

[26] Comments of CTIA & USTelecom, filed July 25, 2014, *supra* note 2, at 11-12.

[27] *In the Matter of 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,* WC Docket No. 09-109, CC Docket No. 95-116, 26 FCC Rcd 6839, 6842 ¶ 12 (2011) ("*May 2011 Order*"). The SWG's tri-chairs consisted of representatives of the Massachusetts DTC, XO Communications, and Verizon; its other seven member entities were AT&T, CenturyLink, Comcast, Cox, T-Mobile, USTelecom, and the District of Columbia Public Service Commission. Particularly because a representative from smaller provider XO Communications served as one of the SWG's tri-chairs, there is no merit to the LNP Alliance's assertion that the SWG lacked a balanced membership. *See* Comments of LNP Alliance, filed November 21, 2014, at 4-5. Nor does the LNP Alliance dispute that many smaller providers (including NANC members) had the opportunity to participate in the SWG. *See supra* note 26.

[28] *See* NANC Membership Directory, *available at* http://www.fcc.gov/encyclopedia/nanc-membership-directory. The NANC's 23 voting members include several state public utility commissioners, companies such as AT&T, Verizon, Vonage, Comcast, Sprint, XO Communications, T-Mobile, SMS/800 Inc., Cox Communications, Bandwidth.com Inc., CenturyLink, and Level 3, as well as industry and consumer associations including CTIA, USTelecom, NASUCA, CompTel, and NCTA.

[29] *Natural Resources Def. Council v. Pena*, 147 F.3d 1012, 1026 (D.C. Cir. 1998).

Further, Neustar's own statements—at least before it appeared that Telcordia would be the recommended bidder—again confirm that there was no process error. Never in its 17-year tenure as LNPA did Neustar claim that the NANC's subcommittees were subject to FACA, and never in the present four-year LNPA process did it object to coordination between the SWG and its parent (the NANC). On the contrary, Neustar declared that "the Consensus Proposal [approved by the Wireline Bureau], 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."[30]

B. Even if Neustar Could Show Any FACA Violation, The Remedy It Seeks is Wholly Unjustified

Neustar has failed to demonstrate any harm or prejudicial error from alleged FACA violations.[31] Due to the highly confidential and proprietary nature of the sensitive business information that this proceeding has involved—indeed, Neustar itself has designated hundreds of pages of documents as confidential and protected from public disclosure—much of the SWG's work product and deliberations *necessarily* had to be protected from public scrutiny and even from dissemination to the competing bidders. As a result, the meeting minutes and other disclosures that Neustar belatedly insists upon could not have revealed sensitive information or details of related internal deliberations in any event. Neustar has failed to explain how it would have presented any different arguments or otherwise modified its strategy if the SWG proceedings followed the procedures it now deems required. And the notion that the

[30] Neustar Mar. 29, 2011 Reply Comments at 2 n.6

[31] *See* 5 U.S.C. § 706 (rule of prejudicial error under the Administrative Procedure Act); *cf. Nat'l Nutritional Foods Ass'n v. Califano*, 603 F.2d 327, 336 (2d Cir. 1979) (Friendly, J.) ("So far as we are aware, no court has held that a violation of FACA would invalidate a regulation adopted under otherwise appropriate procedures, simply because it stemmed from the advisory committee's recommendations, or even that pending rulemaking must be aborted and a fresh start made. We perceive no sound basis for doing so.").

Commission should order a "do-over" simply so the SWG can formally hold public meetings and release minutes—only to exclude or redact large portions due to confidential material—defies common sense.

Moreover, even if the SWG had engaged in any technical violations of FACA (and it did not), there is no risk that a "use injunction" would be imposed here. As the D.C. Circuit has instructed, a use injunction (*i.e.*, an injunction forbidding an agency from using a report generated in violation of FACA) "should be awarded only rarely" and "should be the remedy of last resort."[32] Indeed, Neustar concedes that notice and comment can "render harmless . . . the loss of any past opportunity to participate" under FACA, and thus preclude issuance of a use injunction.[33] As CTIA has previously explained, it is hard to imagine how there could have been *more* opportunity for public comment in this proceeding.[34] This alone makes a use injunction inappropriate. In light of Neustar's own delay in objecting to the SWG procedures, the demonstrable lack of prejudice, and the enormous waste that the relief Neustar requests would entail, the Commission should have no concern that swiftly proceeding with the LNPA selection—as the public interest requires—would risk entry of a use injunction on these facts.

Finally, even if the SWG's work were to be disregarded (though it should not be), the Commission has an ample record—generated over the course of four years and culminating in the comments and reply comments received in response to the Bureau's June 9 *Public Notice*—on which to base its selection decision. As the Commission has made clear on several occasions in these proceedings, "the Commission, or the Bureau acting on delegated authority, has authority to select the LNPA(s), and the NANC/NAPM proposal does not delegate that authority

[32] *Pena*, *supra* note 29, 147 F.3d at 1025.
[33] Neustar October 22 petition at 49 (quoting *Pena*, 147 F.3d at 1026-1027).
[34] Comments of CTIA & USTelecom, filed July 25, 2014, *supra* note 2, at 3-7, 13-15.

to the NANC or the NAPM."[35] In other words, the Commission (or the Wireline Bureau under delegated authority) will make *its own independent judgment* in selecting the next LNPA.

Even apart from the SWG recommendation, the record here is more than adequate to support an independent judgment by the Commission that (1) both bidders are well qualified to act as Administrator and (2) the contract should be awarded to the lower bidder. As noted above, that *Public Notice* solicited comments and reply comments not only on the NANC's vendor recommendation, but also on underlying reports, the bid documents themselves, transcripts of meetings between the FoNPAC and the vendors, opinion letters addressing the vendors' compliance with neutrality requirements, and the investigative reports submitted by NAPM LLC and the SWG in response to a Bureau inquiry into the fairness of the process.[36] That is a sound basis on which the Commission may exercise its own judgment in selecting a new LNPA.

IV. CONCLUSION

CTIA respectfully submits that the Commission should deny Neustar's petitions for declaratory rulings, promptly conclude its LNPA selection process, and immediately move forward with the implementation of the next LNPA contract.

Respectfully submitted,

CTIA – THE WIRELESS ASSOCIATION ®

By: _____/s/_____

Michael F. Altschul
Senior Vice President & General Counsel
CTIA – The Wireless Association®
1400 16th Street, NW, Suite 600
Washington, D.C. 20036
202-785-0081

December 3, 2014

[35] *May 2011 Order*, 26 FCC Rcd 6839, 6841 ¶ 8 (2011); *see also id.* at 6844 ¶ 19; *Order and Request for Comment*, WC Docket No. 09-109, CC Docket No. 95-116, 26 FCC Rcd 3685, 3687-88 ¶¶ 5, 9 (2011).

[36] *See supra* p. 5.