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February 27, 2015

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

Electronically Filed

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

Dear Ms. Dortch:

I write on behalf of Neustar, Inc., in response to Ericsson's proposal to establish "a voting trust for a portion of Ericsson's interest in Telcordia."¹ While the Commission is properly concerned that Ericsson, as currently organized, is neither impartial nor neutral, Ericsson's proposal does not and cannot address its lack of neutrality and impartiality for at least four reasons. *First*, the use of a voting trust to address neutrality concerns is *not* "[c]onsistent with FCC precedent."² On the contrary, the Commission has made clear that voting trusts may not be employed to address structural neutrality concerns. *Second*, the use of a voting trust is not permissible under analogous federal procurement rules. *Third*, Ericsson's proposed voting trust would not effectively insulate Telcordia from the influence of its parent. *Fourth*, Ericsson's proposal comes too late – the circumstances that render Ericsson non-neutral have been evident from the time that it submitted its response to the RFP, and Ericsson was under an obligation to address neutrality issues at that time.³ To permit Ericsson to modify its bid – while not providing the same opportunity to Neustar – would be unlawful.

¹ Letter from John T. Nakahata to Marlene H. Dortch at 1, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (filed Feb. 9, 2015) ("Telcordia Ex Parte Letter").

² *Id.*

³ See Comments of Neustar, Inc. at 13-50, CC Docket No. 95-116, WC Docket No. 09-109 (Corrected Copy filed Aug. 6, 2014); Reply Comments of Neustar, Inc. at 8-29, CC Docket No. 95-116, WC Docket No. 09-109 (filed Aug. 22, 2014); Letter from Aaron M. Panner, Counsel to

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In the *Warburg Transfer Order*, the Commission permitted the use of a voting trust to address neutrality concerns arising from Warburg Pincus's partial ownership interest in Neustar.⁴ Shortly thereafter, the Commission announced that voting trusts would no longer be accepted as a mechanism to address a lack of neutrality. In the *Safe Harbor Order*, the Commission granted Neustar's request to become a publicly traded company so long as no Telecommunications Service Provider ("TSP") or TSP affiliate would acquire a 5% or greater equity stake in Neustar.⁵ The Commission stated, furthermore, that "TSPs and TSP affiliates may not cure any excess interests by placing them in the Voting Trust."⁶ As we have explained previously, Ericsson stands in the shoes of at least one TSP, is ineligible as an equipment manufacturer, and is subject to undue influence by virtue of its role in the wireless sector in particular.⁷ Under the Commission's own precedent, therefore, a voting trust may not be used to cure Ericsson's lack of neutrality. If Ericsson is not neutral, it must be disqualified.

As the Commission's policies for voting trusts in other contexts demonstrate, adoption of a voting trust as a long-term workaround for Telcordia's structural non-neutrality would be an abuse of the voting trust mechanism. "[T]rusts are occasionally established specifically to effect compliance with the Commission's rules for holdings which would violate the rules if held outright . . . [and] 'should be employed only where necessary and then to as limited an extent as possible.'"⁸ Employing a voting trust here as a purported remedy for Telcordia's structural non-neutrality would be neither "necessary" nor "limited" to the extent possible, but rather would simply effect an end-run around the core statutory requirement of neutrality.

That conclusion is borne out by the manner in which the Commission actually uses trusts – that is, as a vehicle of limited duration enabling an entity to *dispose of assets* the Commission's rules or orders forbid it from owning. For example, the Commission typically approves the use

Neustar, Inc., to Marlene H. Dortch, FCC at 3-6, 14-18, CC Docket No. 95-116, WC Docket No. 09-109 (filed Sept. 23, 2014).

⁴ See Order, *Request of Lockheed Martin Corp. & Warburg, Pincus & Co. for Review of the Transfer of the Lockheed Martin Communications Industry Services Business*, 14 FCC Rcd 19792, ¶ 31 (1999) ("*Warburg Transfer Order*").

⁵ See Order, *North American Numbering Plan Administration; Neustar, Inc. Request to Allow Certain Transactions Without Prior Commission Approval and to Transfer Ownership*, 19 FCC Rcd 16982, ¶¶ 1-3 (2004) ("*Safe Harbor Order*").

⁶ *Id.* ¶ 22; see also *id.* ¶¶ 25, 30.

⁷ See *supra* n.3.

⁸ Letter from Peter H. Doyle, Federal Communications Commission, to Richard A. Helmick *et al.*, 26 FCC Rcd 10715 at 5 (July 29, 2011) citing Memorandum Opinion and Order, *In re Applications of Shareholders of AMFM, Inc.*, 15 FCC Rcd 16062, ¶¶ 24, 26 (2000).

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of voting trusts to hold assets temporarily prior to their disposal consistent with the terms of a merger approval.⁹ By contrast, the Commission has consistently rejected the use of voting trusts to circumvent statutory requirements.¹⁰ For example, the Commission specifically rejected the use of a voting trust as a long-term or permanent alternative to its requirements to divest assets under the newspaper-broadcast cross-ownership rules.¹¹

Government procurement rules further reinforce the conclusion that a voting trust may not be used to cure Ericsson's lack of neutrality. In that context, a party may not cure its "impaired objectivity" – *i.e.*, a lack of impartiality or neutrality – through "organizational/financial and informational separation . . . (a firewall)"¹² because the lack of neutrality pertains to the organization as a whole.¹³ Although a voting trust creates the appearance of separation,

⁹ See, *e.g.*, Order, *Infinity Broadcasting Corp. (Transferor) and The Karmazin, Carrus, Wiener Voting Trust (Transferee)*, 11 FCC Rcd 17829 (1996).

¹⁰ See, *e.g.*, *In the Matter of Teleport Transmission Holdings, Inc.*, Memorandum Opinion and Order and Authorization, 8 FCC Rcd 3063, ¶ 8 (1993) (rejecting use of a trust to shield foreign ownership on grounds that "the adoption of the equity benchmarks in Section 310(b) reflects Congressional concerns over substantial alien ownership of Commission licensees even where the alien's ownership interest is non-influential, passive or totally insulated in nature"); *In re Applications of PrimeMedia Broadcasting, Inc.*, Memorandum Opinion and Order, 3 FCC Rcd 4293, ¶ 9 (1988) (explaining that "we do not believe that Congress intended to exclude equitable ownership interests which do not confer actual control" from the determination of whether Section 310(b) thresholds have been exceeded).

¹¹ See Memorandum Opinion and Order, *In the Matter of Petition for Stay or, in the Alternative, Extension of Divestiture Deadline-Owosso Broad. Co.*, FCC 86-155 (1986).

¹² *Nortel Gov't Solutions, Inc.*, B-299522.5, 2009 CPD ¶ 10 (Comp. Gen. Dec. 30, 2008), (sustaining bid protest where agency failed to give meaningful consideration to contractor's organizational conflict of interest because where there is an impaired objectivity conflict, there is an incentive to benefit the organization overall despite any "organizational/financial and informational separation . . . (a firewall)"); *Cognosante, LLC*, B-405868, 2012 CPD ¶ 87 (Comp. Gen. Jan. 5, 2012) ("[A] firewall arrangement is virtually irrelevant to an [organizational conflict of interest] involving potentially impaired objectivity").

¹³ The Commission applied this principle to Neustar in the *Safe Harbor Order* by requiring the company to incorporate the Commission's neutrality requirement into its corporate documents, thus imposing the neutrality requirement on the entire company, not simply the operating unit performing numbering administration, including LNP. *Safe Harbor Order* ¶ 17. Neustar, a company that was just going public, raised far fewer neutrality issues than are presented today by Ericsson. Had the Commission allowed Neustar to place its numbering administration assets into a wholly owned subsidiary subject to a voting trust, the corporate parent would have been free to

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Telcordia managers will have the same incentive and fiduciary duty to benefit its shareholders, and Ericsson will continue to own – directly or beneficially – all of Telcordia’s shares.

Ericsson’s proposal is, moreover, inadequate on its own terms. Ericsson proposes “a voting trust for a *portion* of Ericsson’s interest in Telcordia,”¹⁴ which begs the question what portion of Ericsson’s 100% ownership stake in Telcordia would be controlled by the voting trust.¹⁵ In addition, Ericsson reserves the right to appoint all of the voting trust’s trustee(s), and remains the sole beneficiary.¹⁶ The trustees are thus beholden to Ericsson, just as Telcordia’s employees are beholden to its corporate parent, Ericsson.¹⁷ The voting trust, thus, does nothing to eliminate Ericsson’s economic interest in Telcordia, nor does it address Telcordia’s fiduciary duty to act in the best interest of its parent corporation.

Comparing the circumstances here with the Commission’s previous use of a voting trust to address neutrality concerns underscores the inadequacy of Ericsson’s proposal. Warburg Pincus was (and remains) a private equity company with investments in a range of companies across many industries. At the time of its investment in Neustar, it held small minority investments in some small telecommunications service providers. As a financial investor, Warburg Pincus owned less than 65% of Neustar. Unlike Warburg Pincus, Ericsson is, by its own admission, the largest telecommunications service provider in the world, with deep financial and operational ties to the largest service providers, particularly in the wireless segment of the industry. Ericsson’s 100% ownership of Telcordia is not merely a financial investment; rather, it is intended to advance Ericsson’s overall business strategy. Ericsson’s ability to do so unfairly will only be strengthened if Telcordia becomes the LNPA. Its proposal demonstrates that it is not willing to give up that strategic advantage by surrendering effective control over Telcordia.

engage in significantly more business opportunities. Just as the Commission applied its neutrality requirements to all of Neustar, its neutrality requirements should likewise apply to all of Ericsson.

¹⁴ Telcordia Ex Parte Letter at 1 (emphasis added).

¹⁵ At a minimum, Ericsson’s ownership of Telcordia must be effectively limited to less than 10% to align with Commission precedent. *See Warburg Transfer Order* ¶ 26.

¹⁶ Again, Ericsson’s proposal would give it greater control over the voting trust than the Commission has permitted in the past. Here, Ericsson would appoint all trustees, with Commission oversight, whereas the *Warburg Transfer Order* mandated that all trustees be appointed by a Board with an independent majority. *See Warburg Transfer Order* ¶¶ 11, 32, 33.

¹⁷ Comments of Neustar, Inc. at 28, WC Docket No. 09-109, CC Docket No. 95-116 (July 25, 2014) (“Neustar Comments”).

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The use of a voting trust here would be inappropriate for an additional reason: Ericsson's attempt to change Telcordia's corporate structure comes after the parties' responses to the RFP were evaluated by the NAPM and the NANC. If the Commission is to open up the bidding process to allow Ericsson to change its bid after the fact,¹⁸ including by making a change to its corporate structure, Neustar must be permitted to make comparable alterations to its bid – including to price.¹⁹ Nor would it be permissible to allow Ericsson to cure its neutrality after the selection is made in the event that the contract is awarded to Ericsson.²⁰ As we have explained, post-bid cures would be inconsistent with the RFP process and would constitute impermissible rebidding to benefit a single bidder.²¹ Ericsson should have presented, with its bid, any proposals to cure deficiencies in its neutrality showing.²² Allowing Ericsson alone an opportunity to modify its proposal would be unlawful.

¹⁸ *Piquette & Howard Elec. Serv., Inc.*, B-408435.3, 2014 CPD ¶ 8 (Comp. Gen. Dec. 16, 2013) (sustaining bid protest where the agency engaged in discussions with only the awardee and allowed only the awardee to make a material revision to its proposal because a bidder may not “cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, or revise the proposal”).

¹⁹ *See Wyle Labs., Inc.*, B-408112.2, 2014 CPD ¶ 16 (Comp. Gen. Dec. 27, 2013) (sustaining bid protest where the contract was awarded to a company that altered its corporate structure after submitting its bid for the purpose of addressing “organizational conflicts of interest”).

²⁰ Telcordia Ex Parte Letter at 2.

²¹ Neustar Comments at 30-32.

²² For all of the reasons set forth in this letter, the Commission's decision to permit a voting trust in the *Warburg Transfer Order* creates no precedent that would allow Ericsson to cure a defective proposal after the bidding has closed.

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

Sincerely,



Aaron M. Panner

cc: Daniel Alvarez
Nicholas Degani
Rebekah Goodheart
David Goldman
Amy Bender
Julie Veach
Jonathan Sallet
Kris Monteith
David Simpson
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