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March 6, 2015

Notice of Ex Parte

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

**Re: Notice of Ex Parte Communication
(CC Docket No. 95-116; WC Docket No. 09-109)**

Dear Ms. Dortch:

On March 4, 2015, Jerry James, Consultant to the LNP Alliance¹ and Dave Malfara, Sr., Technical Consultant to the LNP Alliance, and the undersigned held separate meetings with Daniel Alvarez, Legal Advisor to Chairman Wheeler; Nick Degani, Legal Advisor to Commissioner Pai; Travis Litman, Legal Advisor to Commissioner Rosenworcel; and Amy Bender, Legal Advisor to Commissioner O’Rielly. The LNP Alliance provided the attached presentation and discussed a series of issues that the LNP Alliance considers critical to the LNPA selection process at each of these four meetings.

The LNP Alliance continues to urge the Commission to consider the concerns of our small and medium-sized providers with respect to the LNPA transition. Specifically, the LNP Alliance urges the Commission to establish meaningful structural separation of Telcordia from Ericsson beyond what has been contemplated publicly to date. The LNP Alliance member companies remain concerned about the impact of transition costs for small and medium-sized carriers, and encourage the Commission to ensure that such costs do not inhibit their ability to compete. The Commission must also ensure that the ENUM IP database is included in the LNPA requirements; that the risk of potential disruption of this critical function for porting numbers and routing calls and texts is mitigated; and that there is a lengthy transition characterized by exhaustive testing to ensure that number portability continues to function

¹ The LNP Alliance is a consortium of small and medium-sized (“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.

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seamlessly. The FCC must take the time to get this right to avoid a negative impact on consumers and competitive carriers.

If not implemented properly, a transition to a new LNPA could impose significantly more costs than benefits not only on small carriers but also on consumers. The consumer and small carrier benefits of a transition to a new LNPA are currently unclear, particularly given the lack of a Regulatory Flexibility Analysis, the overall dearth of information on what costs small carriers will shoulder, and a lack of information as to what measures will be implemented to curb the influence of large carriers on a new LNPA.

The LNP Alliance is not alone in urging the Commission to consider carefully the impact of an LNPA transition, if there is to be one, on smaller carriers. In a recent *ex parte* letter, a broad coalition of trade associations representing small rural carriers, including NTCA, WTA, the Rural Independent Competitive Alliance (“RICA”), and the Rural Broadband Alliance (“RBA”) (collectively “Small Rural Carrier Coalition”), urged the Commission to conduct a Regulatory Flexibility Act (“RFA”) analysis of the impact of the LNPA transition on small businesses pursuant to Section 553(b) of the Administrative Procedure Act (“APA”).² This is consistent with the position taken by the LNP Alliance in our January 12, 2015 *ex parte* letter, emphasizing that small and medium-sized competitive carriers also require an RFA analysis to understand the costs that will be imposed by this process. The Commission should not proceed to select the next LNPA until it evaluates the effects of the transition on small businesses and, if any impacts arise, identify ways to mitigate costs and burdens imposed on small businesses.

The LNP Alliance also tried unsuccessfully during the meetings to obtain information about the confidential voting trust proposal that, at the request of Commission Staff, has been proposed by Ericsson/Telcordia.³ The LNP Alliance has been highly critical of the acute failure of Ericsson/Telcordia to comply with the Commission’s LNPA neutrality rules and requirements. Most disturbing is Ericsson’s integral relationship with the wireless industry and the nation’s largest carriers exhibited by Ericsson’s publicly acknowledged dependence on sales to the wireless industry; public network management contracts with Sprint and T-Mobile; and publicly announced negotiations with AT&T and Verizon to perform similar network management functions.

² Letter from Small Rural Carrier Coalition to Ms. Marlene H. Dortch, CC Docket No. 95-116, WC Docket No. 07-149, and WC Docket No. 09-109 (March 3, 2015).

³ Letter from John T. Nakahata to Ms. Marlene H. Dortch, CC Docket No. 95-116, WC Docket No. 07-149, and WC Docket No. 09-109 (Feb. 9, 2015) (“Telcordia Ex Parte”).

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On February 5, 2015, Telcordia met with senior Commission Staff to discuss “instituting a voting trust for *a portion of* Ericsson’s interest in Telcordia”⁴ In our meetings, we were unable to obtain information as to what portion of Telcordia’s shares would be voted by the voting trust, a fundamental question that should be publicly available. If the voting trust is the ostensible solution to the severe Ericsson/Telcordia’s neutrality failings, there must be public disclosure of the details of that arrangement so that there can be public comment—before the Commission’s issues its order awarding the contract to Telcordia on March 26—on whether the voting trust duly addresses those failings. It appears that the trustee for the voting trust will be chosen, like all the other “independent” Telcordia Board members, by Ericsson, the beneficiary of a steady stream of equipment and services business from the nation’s largest carriers.⁵ The voting trust trustee will also not be entitled to vote on a series of core corporate functions that could dramatically impact the LNPA, such as corporate reorganizations or the sale or transfer of all Telcordia assets.⁶ Setting aside the Commission’s previous criticism of voting trusts in similar circumstances,⁷ the LNP Alliance strongly urges the Commission to make public the details of the voting trust proposal so that it can be public evaluated consistent with APA notice and comment procedures.⁸

The LNP Alliance is concerned that the Commission’s recently announced process for negotiating Telcordia’s LNPA contract will continue to be dominated by the nation’s largest carriers, a case of the fox guarding the chickens. The Commission delegated to the NAPM LLC (“NAPM”) the task of negotiating the LNPA contract, subject to approval by the Wireline Competition Bureau. As of March 4, 2015, the following companies are Members of the NAPM: (1) AT&T, Inc.; (2) Bandwidth.com, Inc.; (3) Comcast Corporation; (4) Qwest Corporation, d/b/a Century Link; (5) Sprint Nextel Corporation; (6) Time Warner Enterprises, Inc.; (7) TMobile US, Inc.; (8) Verizon Communications, Inc.; (9) Vonage Holdings Corp.; and (10) XO Communications, Inc.⁹ The Commission should not delegate this function but should at a minimum be directly involved with or designate a representative of the public interest to be directly involved with the contract negotiations to ensure that the public interest is fully represented. If there is to be a new LNPA, the transition must be established through an open

⁴ *Id.* at 1.

⁵ Under the plan proposed by Ericsson/Telcordia, this one Board member will then be approved after the fact by the FCC. *Id.*

⁶ *Id.*

⁷ Letter from Aaron M. Panner to Ms. Marlene H. Dortch, CC Docket No. 95-116 and WC Docket No. 09-109, at 2 & fn. 6 (Feb. 27, 2015).

⁸ 5 U.S.C. § 553.

⁹ Letter from Dan A. Sciuolo to Ms. Marlene H. Dortch, CC Docket No. 95-116 and WC Docket No. 09-109, at 1 (Mar. 4, 2015).



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and transparent process that permits small and medium-sized carriers to know how the transition is being implemented and to provide input in order to ensure that the LNPA transition is not skewed in favor of large carrier concerns.

The LNP Alliance looks forward to continued dialog with the Commission through a public and transparent process as to the details of the transition to a new LNPA administrator, if in fact a new contract is successfully negotiated.

As required by Section 1.1206(b), this ex parte notification is being filed electronically for inclusion in the public record of the above-referenced proceedings. If you have any questions or require additional information, please do not hesitate to contact me at 202.659.6655.

Sincerely,

/s/ James C. Falvey
James C. Falvey
Counsel for The LNP Alliance

Enclosure

cc: Daniel Alvarez
Amy Bender
Nick Degani
Rebekah Goodheart
Travis Litman