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March 12, 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 10, 2015, Jerry James, Consultant to the LNP Alliance¹ and Dave Malfara, Sr., Technical Consultant to the LNP Alliance, and the undersigned held a telephone conference with Rebekah Goodheart, Wireline Legal Advisor, to Commissioner Clyburn. The LNP Alliance provided the attached presentation and discussed a series of issues that the LNP Alliance considers critical to the LNPA selection process.

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—and particularly what nonrecurring 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.

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

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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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 specified transition period of sufficient length, characterized by exhaustive testing, to ensure that number portability continues to function seamlessly. The FCC must take the time to get this right to avoid a negative impact on consumers and competitive carriers.

On the call, we discussed the manner in which the Number Portability Administration Center (“NPAC”) is critical to small and medium-sized carriers, not only for number porting but also for critical routing functions. While the Local Exchange Routing Guide (“LERG”) is the database that contains associations between carriers and numbers originally assigned to them, the NPAC is the exceptions database that contains the updated information necessary to determine the new carrier to route to whenever a number is ported out to another carrier, such as a competitive local exchange carrier (“CLEC”). The NPAC then is essential to ensure proper routing to CLECs because it is the sole, universal repository for the updated data that must be used to determine routing to the new carrier of any ported number, and CLECs are more likely to have ported numbers. The NPAC must be administered by a neutral provider, as required by the Commission’s rules,² in order to ensure that calls are ported seamlessly and inexpensively to smaller carriers, but also to ensure that calls are properly routed to smaller carriers so that their customer calls are complete.

We have seen the result when the largest carriers in the industry have been left to govern themselves as to the routing of calls. The widespread rural call completion crisis was a direct result of a failure to establish the baseline rules needed to ensure effective call completion.³ The same will happen here if the LNPA is not a neutral administrator, if the LNP Transition coincides as it will with the IP Transition, and if there is not an extensive and exhaustive transition period to ensure that number porting and routing continue to be efficient and cost-effective. As the New

² See, e.g., 47 C.F.R. § 52.26(a); 47 C.F.R. §52.12(a)(1); and 47 C.F.R. §52.21(k).

³ *In the Matter of Verizon*, Adopting Order, 61 Communications Reg. (P&F) 1369 (2015)(ratifying a \$5 million settlement for Verizon’s failure to investigate whether rural customers could receive long distance or wireless calls to landline phones); see also *In the Matter of Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, 28 F.C.C. Rcd. 16154 (2013).

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American Foundation recently detailed,⁴ the largest carriers that currently have the largest customer bases naturally see customer churn—driven by effective number portability—as a detriment to their business strategies: “Minimizing the barriers to consumer choice and churn enhances competition and consumer welfare.”⁵ While effective number porting is a driver of effective competition, it is “also the bane of service providers because it allows customers who are not satisfied to quickly change providers.”⁶

Because churn benefits smaller providers and hurts larger ones, a wide variety of smaller carriers have filed in this docket to request that the Commission take the time to at least measure the impact of the LNPA transition on small carriers and other small businesses. Most recently, consistent with the position of the LNP Alliance, NTCA, WTA, the Rural Independent Competitive Alliance (“RICA”), and the Rural Broadband Alliance (“RBA”), 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”).⁷ The Commission should extend the time to decide on the next LNPA until *after* such an analysis has been completed.

The LNP Alliance also continued to attempt unsuccessfully during the call to obtain information about the confidential voting trust proposal that, at the request of Commission Staff, has been proposed by Ericsson/Telcordia.⁸ 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.⁹ 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

⁴ *A Public Interest Perspective on Local Number Portability: Consumers, Competition and Other Risks*, The New America Foundation, Open Technology Institute, J. Armand Musey and Michael Calabrese, at 11-12 (March 2015) (“*NAF Report*”).

⁵ *Id.* at 11.

⁶ *Id.*

⁷ 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).

⁸ 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 Letter*”).

⁹ *See, e.g.*, Letter from James C. Falvey, counsel to The LNP Alliance, to Marlene H. Dortch, at 2 (Dec. 11, 2015).

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publicly announced negotiations with AT&T and Verizon to perform similar network management functions.¹⁰

The LNP Alliance has raised serious questions throughout this proceeding about Telcordia's neutrality, including noting that Telcordia's solution of a separate Board for Ericsson's wholly owned Telcordia subsidiary did not create meaningful separation between Telcordia and its wireless equipment manufacturer parent company Ericsson.

The latest solution proposed to address the issue of neutrality has not received adequate public scrutiny under notice and comment procedures.¹¹ Only by extending the time to consider the LNPA selection can the Commission provide the public the time and information necessary to review and comment on the latest voting trust proposal. 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"¹² On our call, 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 at this stage. 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.¹³ 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.¹⁴ Setting aside the Commission's previous criticism of voting trusts in similar circumstances,¹⁵ the LNP Alliance strongly urges the Commission to make public the details of the voting trust

¹⁰ Reply Comments of The LNP Alliance, WC Docket No. 07-149, WC Docket No. 09-109, and CC Docket No. 95-116, at 4-5 (Aug. 8, 2014).

¹¹ 5 U.S.C. § 553.

¹² *Telcordia Ex Parte Letter* at 1.

¹³ Under the plan proposed by Ericsson/Telcordia, this one Board member will then be approved after the fact by the FCC. *Id.*

¹⁴ *Id.*

¹⁵ 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).

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proposal so that it can be public evaluated consistent with APA notice and comment procedures.¹⁶

Telcordia's longstanding interest in establishing ENUM registries and its dominance in the LSMS/SOA market should be red flag issues that the Commission must address in its upcoming order. In 2009, Telcordia outlined in public filings the manner in which the LNPA could execute a successful "anticompetitive monopoly leveraging and cross-subsidization strategy with respect to the ENUM services market"¹⁷ If the Commission awards the contract to Telcordia, it should eliminate that possibility by requiring that all information needed to complete a call in native format to a ported telephone number in the North American Numbering Plan, whether served using TDM or IP technology, must be included in the NPAC and not in separate, private and non-neutral ENUM registries.

In closing, the LNP Alliance urges the Commission to extend the current Neustar contract by two years, or a shorter period, if necessary, in order to ensure that there is sufficient time to give due consideration to the concerns that impact small carriers, small businesses, and consumers. If the Commission decides to award the LNPA contract to Telcordia, we urge you to include the following conditions in that decision:

- Understanding that the LERG only contains routing information for number blocks originally assigned to the requesting provider, the industry needs assurance that all information necessary to successfully route and establish a session (*e.g.*, a telephone call) in native format to a ported number is wholly and completely contained within the NPAC database record for that number, regardless of whether service for the number is provided using TDM or IP technology. This would eliminate the possibility that non-neutral ENUM registries would impose unforeseen costs and/or processes on smaller carriers
- The industry needs assurance that the cost for all carriers to receive information from the NPAC database and to populate the NPAC database with information, regarding the attributes of a telephone number is wholly contained and fully described in the LNPA agreement, and is further controlled as a "shared cost" under 47 C.F.R § 52.32 regardless of whether service for the number is provided using TDM or IP technology.
- The industry needs to know what the costs are for small carriers to complete the transition to a new LNPA and the Commission needs to require that such costs will be

¹⁶ 5 U.S.C. § 553.

¹⁷ Letter from John T. Nakahata, counsel to Telcordia Technologies, Inc., to Julie Veach, Acting Bureau Chief, WCB, at 5 (May 22, 2009).

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nondiscriminatory and will not impose an undue burden on smaller carriers that have a limited capacity to absorb additional costs. *See* above concerning the need for an RFA.

- The industry needs assurance that the methods and procedures necessary to access and to populate the NPAC database information are fully described in the LNPA agreement.
- The industry needs assurance that comprehensive testing methods for service assurance, along with recommended timeframes for testing, are outlined in the LNPA agreement. These timeframes must be sufficient to provide adequate time for the comprehensive testing that is necessary to ensure that future porting and routing will not fail. Testing must be concluded by the new LNPA prior to cutover for numbers where service is provided using both TDM technology and for numbers where service is provided using IP technology.
- Telcordia should not be permitted to provide LSMS/SOA services and those services should be spun off by Ericsson to another entity that is not controlled by Telcordia.
- The Commission should require Ericsson to spin off Telcordia from Ericsson. We have not seen any other public proposal that would provide the neutrality required by the Commission's rules. Ericsson will continue to rely heavily on telecommunications equipment sales and will literally run the networks of at least two major wireless providers so Telcordia cannot have a relationship with this parent company without violating the Commission's rules.¹⁸
- If the Commission is going to institute a voting trust, the details should be made publicly available for public comment, including the percent of ownership controlled by the voting trust. The voting trust representative should be named by the Commission and not by Ericsson. And the Commission should not permit exceptions for decisions on which the voting trust will not be permitted to vote because a voting trust is already a weak and inadequate solution to Telcordia's lack of neutrality. Ericsson cannot have it both ways: it cannot continue to make independent corporate decisions on key issues such as a merger or sale of Telcordia or issuing debt, while still claiming that Telcordia will be independent and neutral. What better way to put pressure on the voting trust than to threaten actions over which the trustee has no say due to the voting trust exceptions.

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 such a transition is to take place.

¹⁸ *See, e.g.*, 47 C.F.R. § 52.26(a); 47 C.F.R. § 52.12(a)(1); 47 C.F.R. § 52.21(k), and 47 C.F.R. § 52.21(a)(1)(iii).



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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
Julie Veach
Lisa Gelb