



March 16, 2015

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: WC Docket No. 07-149
WC Docket No. 09-109
CC Docket No. 95-116
GN Docket No. 13-5

Dear Ms. Dortch:

On March 12, 2015, Michael Calabrese of the New America's Open Technology Institute (OTI) met with Rebekah Goodheart, Legal Advisor to Commissioner Mignon Clyburn, concerning the above-referenced proceedings.

The OTI representative summarized the main points made in a research paper that OTI published and filed on March 9 entitled *A Public Interest Perspective on Local Number Portability: Consumers, Competition and Other Risks*, co-authored by OTI's Michael Calabrese and J. Armand Musey, an independent telecom policy and financial analyst. A copy is attached to this letter.

OTI recommends that prior to finalizing the selection of a vendor for the Local Number Portability Administrator ("LNPA") contract, the Commission should take this opportunity to reconsider the future role of the number portability system and of the LNPA in relation to market competition, public safety and the IP technology transition through a public notice and comment rulemaking.

OTI's report describes how the functionality of today's local number portability platform extends well beyond providing routine number porting services between telecom carriers. It has evolved into a significant component in the greater ecosystem of telecommunications competition, public safety and technological evolution. As a result, any changes to the LNPA now will have broader and evolving public interest implications for consumers, non-national carriers and a range of other stakeholders.

The ability of the LNPA to impartially operate to serve the public interest is critical. A number of smaller regional and rural providers have argued that appointing Telcordia, a subsidiary of Ericsson, as the LNPA would threaten the industry's competitive environment. Specifically, they are concerned about whether a LNPA controlled by a parent whose largest customers are the dominant telecom operators would be eager to support easier customer switching or new and potentially disruptive technologies, such as truly national number porting and ubiquitous IP number porting. Moreover, a LNPA with its core line of business dependent on the very largest carriers creates the perception, if not the reality, of conflicts of interest.

OTI is also concerned about the unknown but potentially substantial increased total costs that non-national carriers could face from a LNPA transition and from the possible loss of (or extra charges for) certain value-added services. Competitive carriers worry that under the Telcordia bid the fees for future enhanced services will not be fair and non-discriminatory (e.g. volume pricing would benefit large carriers).¹ These concerns are exacerbated by the failure to include small- and mid-sized carriers in the NANC's selection process and the lack of transparency throughout the process. As the Competitive Carriers Association stated in a filing last year:

The LNPA selection process does not seem to have taken into account the interests of non-nationwide wireless carriers in matters such as vendor transition costs, support for Internet Protocol-based numbering systems, and several of the features and functions on which the business models of the competitive wireless carriers depend. . . . In particular, it does not appear that any analysis has been performed to determine the impact of an LNPA transition of smaller carriers, either in terms of financial effects, or in terms of consumer disruption. . . . These services are not addressed by the RFP or are addressed only cursorily, and may not be supported with hundreds of millions of dollars more in potential fees.²

More generally, the Commission should address the way the current numbering portability system disadvantages non-national carriers by failing to port consumers' numbers between regions (LATAs) when a regional carrier acquires customers from areas where it does not

¹ See Comments of the LNP Alliance, WC Docket No. 07-149; WC Docket No. 09-109; CC Docket No. 95-116 (July 25, 2014) at 22.

² *Ex parte* filing of Competitive Carriers Association, CC Docket No. 95-116; WC Docket No. 07-149; WC Docket No. 09-109 (March 21, 2014) ("CCA *Ex parte* from March 21, 2014")

operate and own switches. The North American Numbering Council's ("NANC") vendor selection process could have been an opportunity to correct this number portability disadvantage for smaller carriers, and yet the Request for Proposal ("RFP") failed to specify any particular requirements for supporting nationwide porting. CCA, for example, has expressed these concerns, stating that "the RFP does not fully account for new and evolving services, including IP transition functionalities, which would free number porting from geographic constraints."³ CCA described the competitive disadvantage faced by non-national carriers and concluded:

If the Commission were to provide a directive to the NANC and the LNPA to break down these artificial [geographic] barriers – again, for which there are no technical or legal justifications – competition and enhanced mobility would be further promoted through the [LNP] system.⁴

Public safety and law enforcement agencies have registered a separate set of concerns about losing current LNPA services they rely on today, while federal agencies have noted national security concerns about transitioning to a foreign-owned vendor or utilizing foreign code in the NPAC.

A common thread among most commenters is that their concerns were not adequately addressed during the RFP process overseen by the NANC's Selection Working Group ("SWG"). OTI's report analyzes these concerns and finds them credible and potentially having critical policy impacts.

OTI suggests that if the Commission nonetheless adopts the pending item at its March 26 open meeting and appoints a new LNPA, it can still address many of the concerns raised in this report by taking two additional actions.

First, the Commission should consider appointing an independent LNPA transition overseer, or manager, who can certify that the transition costs for small- and mid-size carriers are reasonable and that the full range of services, at the same level of quality, will be provided by the new LNPA. Such an intermediary can also vet the independence of board appointees to a voting trust, if that is the mechanism used to ensure the competitive neutrality of the LNPA, as well as serve as a sort of referee to arbitrate and recommend the resolution of any disputes between the incumbent and new LNPA.

³ *Ibid.*

⁴ *Ibid.* See also Comments of Competitive Carriers Association, In the Matter of Technology Transitions and Numbering Policies for Modern Communications, GN Docket No. 13-5, WC Docket No. 13-97, at 7-8 (filed March 31, 2014).

Second, the Commission should put the negotiated contract and its scope of work out for public notice and comment prior to finalizing it. Since the scope of the LNPA contract is completely unknown at this time to most stakeholders, this will provide transparency and potentially valuable feedback that the Commission can use to revisit certain provisions that stakeholders can make a persuasive case need to be corrected, clarified or renegotiated.

In sum, the Commission should take this opportunity to directly confront the reality that the LNPA's suite of services has evolved into much more than a simple number porting service between telecom companies. The potential policy and social risks from not revisiting the LNPA contract are much greater than any savings from deferring to the dominant carriers and avoiding this opportunity to reassess the future role of the LNP system and of the LNPA specifically through a public notice and comment rulemaking.

Respectfully submitted,

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cc: Erin McGrath