



March 18, 2015

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

***Re: Notice of Ex Parte Communication***

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 16, 2015, Michael Calabrese of the Open Technology Institute at New America (“OTI”) and J. Armand Musey of Goldin Associates, LLC met separately with Travis Litman, Legal Advisor to Commissioner Jessica Rosenworcel, Nicholas Degani, Legal Advisor to Commissioner Ajit Pai, and Amy Bender and Erin McGrath, Legal Advisors to Commissioner Michael O’Rielly, to discuss concerns raised by a potential transition of the contract for the Number Portability Administration Center (“NPAC”) to a new Local Number Portability Administrator (“LNPA”).

Calabrese and Musey summarized a white paper they co-authored, and which OTI recently submitted in the above-captioned proceedings, recommending that, prior to approving the selection of a vendor for the NPAC contract, the Commission take the 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.<sup>1</sup> A copy of the report is attached to this letter.

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<sup>1</sup> J. Armand Musey & Michael Calabrese, *A Public Interest Perspective on Local Number Portability: Consumers, Competition and Other Risks* (Mar. 2015), attached to Letter from Michael Calabrese, Director, Wireless Future

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. 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. Rather than moving forward based on an incomplete record, OTI recommends that the Commission take the time needed to fully evaluate the future role of the LNPA, and the implications of awarding the NPAC contract to a new LNPA, through a public notice and comment rulemaking proceeding.

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 (one of the carriers' largest expenses) 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.

A successful LNPA will not only replicate the service offerings available today, but continue to innovate and improve in step with the rapidly evolving telecom sector. Even a perception of a conflict of interest, particularly in a rapidly consolidating industry, may limit the effectiveness of the LNPA as it will likely reduce the willingness of smaller carriers to share critical customer and business information the LNPA needs for operational success and to facilitate innovation. With Ericsson owning 100 percent of Telcordia, it's unclear that it is even possible to eliminate the perception that Ericsson would influence the LNPA.

Calabrese and Musey also noted concerns about the unknown but potentially substantial and disproportionate 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).<sup>2</sup> 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 ("CCA") 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

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Project, Open Technology Institute at New America, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 07-149, 09-109; CC Docket No. 95-116; GN Docket No. 13-5 (Mar. 9, 2015).

<sup>2</sup> 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.

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.<sup>3</sup>

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 of these stakeholders is that their concerns were not adequately addressed during the RFP process overseen by the NANC's Selection Working Group ("SWG"). The OTI representative noted that although the Commission offered opportunities for public comment, the costs associated with the transition and the scope, terms and pricing of the services to be offered by the LNPA in the future remain undisclosed.

OTI suggests that if the Commission nonetheless adopts the pending item at its March 26 open meeting and moves ahead to negotiate a contract with the new LNPA, it can still address some of the concerns raised in OTI's 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.

**Second, the Commission should put the negotiated contract and its scope of work out for public notice and comment prior to finalizing it.** The precise scope of the LNPA contract is almost completely unknown at this time to most stakeholders, leaving them little basis to provide the Commission potentially critical feedback. A public notice and comment period will provide transparency and an opportunity for the Commission to receive feedback it has not heard and possibly use it to revisit certain provisions that stakeholders can make a persuasive case need to be corrected, clarified or renegotiated.

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<sup>3</sup> *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")

More generally, the Commission should commit in the Order to addressing 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 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."<sup>4</sup> 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.<sup>5</sup>

In sum, the potential competition 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,

/s/ Michael Calabrese  
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cc: Travis Litman  
Nick Degani  
Amy Bender  
Erin McGrath

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<sup>4</sup> *Ibid.*

<sup>5</sup> *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).