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March 19, 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., to bring to the Commission's attention a recent Supreme Court ruling that confirms what Neustar has previously demonstrated: that designating a new LNPA or altering the neutrality requirements governing eligibility for that designation constitutes an amendment of existing legislative rules and requires notice and comment procedures that the Commission has not followed in this proceeding.[1]

In *Perez v. Mortgage Bankers Association*,[2] the Supreme Court confirmed that, unless a rule falls within the APA exemption for "interpretive" rules, the APA requires the agency to employ the three-step procedure for notice-and-comment rulemaking: publishing a notice of proposed rulemaking ("NPRM") in the Federal Register, giving interested persons an opportunity for notice and comment, responding to significant comments that are submitted, and including in the rule's text a general statement of its basis and purpose.[3] As Neustar has explained, the designation of the LNPA is not a mere interpretive rule; it is an exercise of the legislative authority delegated to the Commission in § 251 and is intended to have the force and

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[1] *See* Comments of Neustar, Inc., at 49-61, CC Docket No. 95-116, WC Docket No. 09-109 (filed July 25, 2014) ("Neustar Comments").

[2] Nos. 13-1041, 13-1052 (U.S. Mar. 9, 2015).

[3] *Id.*, slip op. at 2-3.

effect of law.[4] Thus the Commission must follow the APA procedures for notice-and-comment rulemaking in making that designation.

Furthermore, *Perez* confirms that the APA "mandate[s] that agencies use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance."[5] Both the original designation of the LNPA and the rule barring selection of an entity with a direct material financial interest in a telecommunications equipment manufacturer were adopted pursuant to notice-and-comment rulemaking. Therefore, as Neustar has explained, amending either or both of those rules likewise requires the Commission to publish an NPRM in the Federal Register and give interested persons an opportunity to comment on that NPRM.[6]

As *Perez* describes, the act of "amending" a rule consists of changing its wording or "'formally alter[ing]'" the text "'by striking out, inserting, or substituting words.'"[7] As Neustar has explained, designating a new entity as the LNPA would formally alter 47 C.F.R. § 52.26(a). That rule codifies (in relevant part) the 1997 NANC Selection Working Group Report, which in turn designates Perot Systems and Neustar's predecessor-in-interest (Lockheed Martin) as LNPAs.[8] Likewise, designating an entity (such as Ericsson) with a "direct material financial interest" in telecommunications manufacturing would formally alter the same rule, because it is contrary to the plain terms of the incorporated Report.[9] Either change constitutes an amendment of a legislative rule and, therefore, requires the Commission to abide by the APA's notice-and-comment rulemaking procedures. The Commission has not done so here.

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

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[4] Neustar Comments at 51-53; *AT&T Corp. v. Iowa Uitls. Bd.*, 525 U.S. 366, 383 n.9 (1999) (noting that § 251(e)(1) "requires the Commission to exercise its rulemaking authority"); *see also Perez*, slip op. at 2-3 (explaining that rules adopted pursuant to notice and comment, unlike interpretive rules, have "the force and effect of law").

[5] *Perez*, slip op. at 8 (citing *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)).

[6] Neustar Comments at 59.

[7] *Perez*, slip op. at 10 (quoting Black's Law Dictionary 98 (10th ed. 2014)).

[8] Neustar Comments at 54, 58-59.

[9] *Id.* at 33, 59.

cc: Chairman Wheeler
Commissioner Clyburn
Commissioner Rosenworcel
Commissioner Pai
Commissioner O'Rielly
Jonathan Sallet
Julie Veach
Ruth Milkman
Daniel Alvarez
Rebekah Goodheart
Travis Litman
Nicholas Degani
Amy Bender
Michele Ellison