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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:

We write on behalf of Neustar, Inc. (“Neustar”) in brief response to Ericsson’s March 18 *ex parte* letter.¹ Despite Ericsson’s assertions, Neustar’s request for appropriate transparency with regard to the national security provisions to be included in the local number portability administrator (“LNPA”) contract and the December 8, 2014, report from the Office of the Director of National Intelligence (“ODNI”) is not an “extraordinary demand.”

With regard to the national security provisions for the LNPA’s contract, Neustar is simply requesting that the Commission follow the transparency principles that it has applied in the context of licensing, which in part require publication of national security agreements. This procedure is a matter of practice for the Commission, and there is nothing inappropriate about Neustar’s request that the Commission follow a similar procedure to allow for disclosures (with appropriate redactions) of the national security conditions placed on the LNPA.

As described in Neustar’s March 12 *ex parte* letter,² the Commission issued the “Foreign Participation Order” in 1997 to bring the U.S. into alignment with its obligations under the

¹ Letter from John Nakahata, Counsel for Ericsson, to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 95-116, WC Docket Nos. 07-149, 09-109 (Mar. 18, 2015).

² Letter from Stewart A. Baker & Michael A. Sussmann, Counsel for Neustar to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 95-116, WC Docket No. 09-109 (Mar. 12, 2015).

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WTO's Basic Telecommunications Services Agreement ("BTA") by substantially increasing the scope of foreign involvement in the U.S. telecommunications sector. The BTA requires, among other things, broad commitments to transparency among its member nations. Following the issuance of the Foreign Participation Order in 1997, the Commission's general practice has been to make security conditions in the licensing context part of the public record and subject to comment, an established practice which counsel for Ericsson does not refute. Indeed, our March 12 *ex parte* letter cited several examples of such network security agreements that were included in the public record, and there are several others that are publicly available.

Given the Commission's long-standing practice, there is no justification for treating security conditions required of the LNPA in a less transparent manner than national security-related conditions publicly disclosed in other contexts.

With regard to the December 8, 2014, ODNI report, *National Security Implications of Related to Local Number Portability Administration – Review Group Report* ("ODNI Report"), to the extent practical, the Commission should make the ODNI Report part of the record. Consistent with Commission practice regarding this docket to date, careful review by Commission staff and use of redactions and reservation of unredacted material for cleared counsel can adequately address the need to balance transparency and public access with the need to protect sensitive national security information.

Although not addressed in Ericsson's March 18 *ex parte* letter, Neustar also has been requesting, since March 6, 2015, that the Commission permit Neustar's cleared counsel to review the ODNI Report in the FCC's sensitive compartmented information facility ("SCIF"), which would not raise any issues regarding public disclosure of sensitive information.³

We urge the Commission to follow its established practices and make the national security provisions for the LNPA available for comment, put the ODNI Report on the record as it did for the December 8, 2014, letter, and permit Neustar's cleared counsel access to the ODNI Report.

³ See Letter from Stewart A. Baker, Michael A. Sussmann, and Aaron M. Panner Counsel for Neustar to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 95-116, WC Docket No. 09-109 (Mar. 17, 2015). On May 19, 2015, the staff of the Public Safety and Homeland Security Bureau informed counsel for Neustar that the ODNI report would not be placed in the record of the proceeding. The reasons given for that decision do not bear scrutiny, and cannot be squared with the earlier decision of the staff to put the cover letter accompanying that report in the record. The e-mail is attached as Exhibit A. Neustar reserves the right to challenge the staff decision not to place the ODNI report in the record.

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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 one of us.

Sincerely,

Stewart Baker/cmw *Michael Sussman/cmw* *Aaron M. Panner/cmw*

Stewart Baker
Steptoe & Johnson LLP

Michael Sussmann
Perkins Coie LLP

Aaron M. Panner
Kellogg, Huber, Hansen,
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Counsel to Neustar, Inc.

cc: Chairman Wheeler
Commissioner Clyburn
Commissioner Rosenworcel
Commissioner Pai
Commissioner O'Rielly
Jonathan Sallet
Julie Veach
Admiral David Simpson
Mindel De La Torre
Ruth Milkman
Daniel Alvarez
Rebekah Goodheart
Travis Litman
Nicholas Degani
Amy Bender
Michele Ellison
Allan Manuel

EXHIBIT A

From: Allan Manuel [REDACTED]
Date: Thursday, March 19, 2015 at 2:07 PM
To: Michael <msusmann@perkinscoie.com>, Stewart Baker <Sbaker@steptoe.com>, "Farquhar, Michele C. (michele.farquhar@hoganlovells.com)" <michele.farquhar@hoganlovells.com>
Cc: Terry Cavanaugh [REDACTED] Kenneth Moran [REDACTED]
Subject: FCC response to request for classified interagency report

You have requested access to a classified report referenced in the interagency memorandum filed in FCC docket 09-109 on March 3, 2015. See Letter from William R. Evanina, National Counterintelligence Executive, to Rear Admiral David Grey Simpson (Ret.), Chief, Public Safety and Homeland Security Bureau, FCC, (dated Dec. 17, 2014). The classified report that you seek has not been placed in the record in the current LNP proceeding and is not being made available to outside parties, even those with appropriate security clearances. As the interagency memorandum notes, the other agencies did not take a position on which bidder should be selected. *Id.* Accordingly,

under the Commission's *ex parte* rules, the classified report does not constitute a "presentation" as it was not "directed to the merits or outcome of a proceeding," nor was it intended to "affect the ultimate decision" on the issues addressed in this LNPA selection proceeding. 47 C.F.R. §§ 1.1202; 1.1206(b)(3). Moreover, even if the classified report was deemed to be a "presentation," it is exempt from disclosure because it involves "classified security information." 47 C.F.R. § 1.1204(a)(4).

Regards,

Allan

Allan K. Manuel, Esquire



Associate Bureau Chief for National Security & International Affairs
Public Safety & Homeland Security Bureau
Federal Communications Commission