



March 23, 2015

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

Re: *Telephone Number Portability, et al.*, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109

Dear Ms. Dortch:

Pursuant to 47 C.F.R. 1.1206(b)(2)(iv), Telcordia Technologies, Inc. d/b/a iconectiv (“Telcordia”) hereby replies to Neustar’s March 19, 2015 *ex parte* letter.¹ Neustar argues that under the Supreme Court’s recent decision in *Perez v. Mortgage Bankers Association*,² the LNPA selection must be subject to notice-and-comment procedures.³ Neustar misconstrues *Perez*.

Perez is irrelevant to the LNPA selection. *Perez* addressed whether an agency that has already issued an interpretive rule may change it fundamentally without notice and comment.⁴ The Court held that it may.⁵ But as Telcordia explained in its August 22 reply comments, the Commission’s LNPA selection is a classic example of an adjudication—not a rulemaking.⁶ Thus, a case discussing the procedures for issuing interpretive rulings⁷ is totally inapposite.

¹ Letter from Aaron M. Panner, Counsel to Neustar, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116 & WC Docket No. 95-116 (filed Mar. 19, 2015) (“*Ex parte*”) (three total pages).

² *Perez v. Mortgage Bankers Ass’n.*, 135 S. Ct. 1199 (2015).

³ *Ex parte* at 1.

⁴ *Perez*, 135 S. Ct. at 1203.

⁵ *Id.*

⁶ Reply Comments of Telcordia Technologies, Inc., d/b/a iconectiv at 51-61, WC Docket No. 09-109 & CC Docket No. 95-116 (filed Aug. 22, 2014) (erratum filed Sept. 3, 2014) (erratum at 52-62) (“Telcordia Reply Comments Erratum”).

⁷ *Perez* also did not hold, as Neustar suggests, that “unless a rule falls within the APA exemption for ‘interpretive’ rules, the APA requires the agency to employ [notice and comment].” It recognized numerous exceptions to notice-and-comment rulemaking, *Perez*, 135 S. Ct. at 1203-04, and confirmed that agencies must employ notice and comment only

Neustar's misreading of *Perez* relies on the Court's statement that the APA requires agencies to "use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance."⁸ First, however, Neustar starts from the mistaken premise that the Commission selected it as the LNPA through rulemaking.⁹ It did not. As Telcordia has previously demonstrated, the Commission chose Neustar through adjudication—albeit subject to public comment—applying criteria that the Commission adopted through rulemaking.¹⁰ But the fact that the Commission elected to permit comment on the adjudication plainly does not transform the procedure into a rulemaking.¹¹

In addition, Neustar places far more weight on the quoted passage than it can carry—while *Perez* indicates that the same procedures govern both *rulemaking* and *amendment* of the rules adopted through rulemaking, *Perez* certainly does not mandate that adjudications be carried out through notice-and-comment rulemaking. That conclusion would be contrary to the APA.¹² Nor does *Perez* require that future adjudications be conducted concurrently with a notice-and-comment rulemaking if that was the case for the first adjudication—again, *Perez* does not address adjudications at all, but only says that rules adopted through rulemaking should be amended using rulemaking processes. In any event, however, the current LNPA selection process *has* been subject to multiple rounds of public comment—a point Neustar conveniently overlooks in its *ex parte*.

Perez also does not bolster Neustar's argument that the Commission adopted a rule barring telecommunications equipment manufacturers from serving as LNPA. Again, Neustar's argument assumes—incorrectly—that the Commission had adopted such a legislative rule. But, as Telcordia has demonstrated, Neustar's argument misconstrues 47 C.F.R. § 52.26(a) and the order adopting it,¹³ which merely incorporated by reference the *recommendations* of the NANC's April 1997 report. Those recommendations did not include a prohibition against

where explicitly required to by the APA. *Cf. id.* at 1206 (“[APA] Section 1 defines what a rulemaking is. It does not, however, say what procedures an agency must use when it engages in rulemaking. That is the purpose of § 4.”).

⁸ *Perez*, 135 S. Ct. at 1206.

⁹ *See Ex parte* at 2.

¹⁰ Telcordia Reply Comments Erratum at 59 (explaining that LNPA identity is not fixed by rule).

¹¹ *See* Telcordia Reply Comments Erratum at 57 (“[A]n agency is free to afford parties additional procedural rights such as notice and comment in an adjudication, and doing so does not turn it into rulemaking.”).

¹² *See supra* note 7.

¹³ *Telephone Number Portability*, Second Report and Order, FCC 97-289, 12 FCC Rcd. 12,281 (1997).

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equipment manufacturers serving as the LNPA.¹⁴ In sum, in the absence of a preexisting rule, *Perez* can have no effect, and here there is no legislative rule.¹⁵

Finally, Neustar's clumsy effort to recast the LNPA selection as an "amendment" to the original LNPA rules is meritless. Again, Telcordia has demonstrated that the designation of a particular entity as the LNPA is not a legislative rule—and, indeed, Neustar admits that "the designation of the LNPA is not a mere interpretive rule."¹⁶ Therefore, changing the identity of the entity designated as the LNPA is not an amendment to a rule.

Sincerely,



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¹⁴ Telcordia Reply Comments Erratum at 15-19.

¹⁵ Even if the Commission had adopted a legislative rule, nothing in *Perez* precludes the Commission from waiving such a rule, for good cause shown. 47 C.F.R. § 1.3; *cf. Wait Radio v. F.C.C.*, 418 F.2d 1153 (D.C. Cir. 1969).

¹⁶ *Ex parte* at 1.