

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telcordia Technologies, Inc. Petition to Reform)	WC Docket No. 07-149
Amendment 57 and to Order a Competitive)	
Bidding Process for Number Portability)	
Administration)	
)	
Petition of Telcordia Technologies, Inc. to)	WC Docket No. 09-109
Reform or Strike Amendment 70, to Institute)	
Competitive Bidding for Number Portability)	
Administration, and to End the NAPM LLC’s)	
Interim Role in Number Portability)	
Administration Contract Management)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	

**COMMENTS OF
OPEN TECHNOLOGY INSTITUTE AT NEW AMERICA**

I. INTRODUCTION

The Open Technology Institute at New America (“OTI”) hereby submits these comments in response to the Commission’s *Public Notice*¹ seeking comment on the North American Portability Management LLC’s (“NAPM”) Transition Oversight Plan (“*Transition Plan*”)² mandated by the Commission’s recent *LNPA Selection Order*.³ OTI is a longtime advocate of policies that further the Commission’s mandate to promote competition, innovation and universal

¹ Wireline Competition Bureau Seeks Comment on the North American Portability Management LLC’s Transition Oversight for Local Number Portability Administrator Contract, Public Notice, DA 15-554 (rel. May 7, 2015).

² Letter from Todd D. Daubert, Counsel to NAPM LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 07-149 and 09-109, CC Docket No. 95-116, Attachment (filed Apr. 27, 2015) (“*Transition Oversight Plan*” or “*Plan*”).

³ *Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration et al.*, WC Docket No. 07-149 *et al.*, Order, FCC 15-35 (rel. Mar. 27, 2015) (“*LNPA Selection Order*”).

service at affordable prices in the markets for telecom services. Accordingly, OTI has been active in analyzing and commenting on the LNPA selection process and particularly its impact on consumers and competition, including related policy reforms that should be considered by the Commission in addition to merely approving the selection of a new LNPA.⁴

OTI is filing to remind the Commission and other stakeholders that in the end number porting impacts *consumers* most of all. As Chairman Wheeler noted in his statement before the vote on LNPA selection *Order*, “[e]very day more than 100,000 individuals and businesses in America switch their phone carriers but keep their old phone number.”⁵ Indeed, roughly one in twenty numbers are ported each year, the increasing majority of which are wireless-to-wireless or wireline-to-wireless, reflecting the cord cutting that increasingly leaves individuals with a single multi-purpose phone number whether they are home or on the go.⁶ Commissioner Clyburn correctly observed that “[i]n today’s always-on, 24/7 digital society, some people’s 10-digit telephone number is as important an identifier as their birthdate or Social Security number.”⁷

A transition that avoids any breakdown in today’s well-functioning (if only regional) number porting system is critical to protecting *consumers* – and not just the “industry stakeholders” that the *Transition Oversight Plan* is singularly focused on. Seamless and neutral

⁴ See 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 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 (filed Mar. 9, 2015); *Ex Parte* Letter from Michael Calabrese, Director, Wireless Future 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 (filed Mar. 18, 2015).

⁵ Statement of Chairman Tom Wheeler, *LNPA Selection Order* (rel. March 26, 2015).

⁶ More than two in five (41%) of U.S. households had only wireless phones as of year-end 2013, a number that skews higher in younger and low-income demographics. See Stephen J. Blumberg, Ph.D., and Julian V. Luke, “*Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July – December 2013*,” Center for Disease Control and Prevention, July 2014, available at: <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201407.pdf>.

⁷ Statement of Commissioner Mignon Clyburn, *LNPA Selection Order* (rel. March 26, 2015).

number porting among the nation's roughly 2,000 telecom carriers is not merely a great convenience for consumers; it is also a pillar of competition policy. T-Mobile's "un-carrier" campaign would not be exerting nearly as much downward pressure on mobile phone prices if consumers couldn't keep their longtime phone number when they switched carriers. One economist estimated that number portability has resulted in \$8 billion to \$10 billion in consumer benefits.⁸

II. IDENTIFYING TRANSITION RISKS MUST ALSO FOCUS ON CONSUMERS

In its discussion of "Transition Risks and Costs," the *LNPA Selection Order* focuses almost exclusively on the potential direct service provider expenses (such as for testing, training and process development), industry costs to manage the transition, and law enforcement expenses to test and train on the new platforms.⁹ Although the magnitude of these direct and indirect costs to providers and law enforcement remain unknown and in dispute, the costs will ultimately be paid for by consumers and by taxpayers, respectively. However, there are additional transition costs to consumers that the Wireline Competition Bureau and Commissioners receiving monthly briefings from the Bureau should scrutinize, seek to minimize, and make more transparent. As the NAPM adds detail to the outline of a *Transition Plan* it filed – and as NAPM prepares its 30-day status reports to the Bureau – OTI recommends that the following additional costs be reported and minimized to the extent possible:

- *Do-not-call list*: The LNPA provides critical support for maintaining the accuracy of do-not-call registries. A failure in the transition could lead to the breakdown of this popular—and statutorily mandated—service. Likewise, this

⁸ See Hal Singer, "Estimating the Costs Associated with a Change in Local Number Portability Administration," at 2, attached to Letter from Aaron Panner, Counsel, Neustar, Inc. to Marlene Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket No. 09-108 (Sept. 23, 2014).

⁹ *LNPA Selection Order* at ¶¶ 151-157.

could disrupt U.S. businesses' efforts to comply with the Telephone Consumer Protection Act (distinguishing consumers' wireline vs. wireless phone numbers), leading to more class action suits and consumer annoyance.

- *iTRS disruption*: Internet telephone relay service (iTRS) providers require access to updated and reliable numbering data to provide accessibility services, including IP Relay and IP Captioned Telephone Service, for persons with hearing and speech disabilities. Any added delays or breakdown in the LNP database could compromise telecommunications access to deaf and hard-of-hearing consumers. The Commission's recent Open Internet Order explicitly declined to forbear from Section 225 in order to protect the integrity of these services for the disabled.
- *Increase in consumer complaints*: According to the Consumer & Governmental Affairs Bureau's quarterly complaint statistics, the number of consumer complaints regarding wireless telecommunications has dramatically decreased since 2012. It will be important to monitor complaints to ensure that the LNPA transition is not causing a substantial increase the number of complaints, particularly (as noted above) because currently more than 40 percent of U.S. households are relying entirely on wireless phone service.
- *Mass number porting breakdowns*: An important value-added feature of the current LNP system is the ability to route mass quantities of phone numbers in response to a major disaster (e.g., rerouting numbers in areas in the aftermath of a hurricane). The performance levels and support requirements for this service should be specified and monitored for adverse changes during the transition.

More generally, it's critical that consumers and small businesses not be deterred from switching telephone providers if that entails a disruption of their service, a barrage of misdirected calls, an influx of telemarketing calls, or wasted time speaking with customer service representatives trying to restore their service. OTI urges the Commission to require that the

additional risks and costs to consumers noted above – as well as any significant change in the “definite error rate” discussed in the *LNPA Selection Order* – be monitored, reported and disclosed throughout the transition process.

III. STAKEHOLDER OUTREACH AND EDUCATION MUST ALSO INCLUDE CONSUMERS

OTI is pleased to see that NAPM’s proposed *Transition Plan* acknowledges a willingness to engage in outreach efforts with “a broad range of stakeholder groups,” particularly smaller carriers, in order to allow for “widespread participation” in the transition process.¹⁰ However, we note that the *Transition Plan* does not make a single reference to “consumers” as a legitimate stakeholder group, let alone specify in the “Stakeholder Outreach and Education” section the specific ways in which consumers and the general public – who are the intended beneficiaries of the Commission’s number portability rules – will be informed, engaged and protected. This should perhaps not be surprising in a *Transition Plan* originating in bodies (NANC and NAPM) dominated by the largest telcos and their trade associations. Nevertheless, as the Commission states at the outset of the *Order*, the LNPA itself is intended to “play[] a crucial role in promoting consumer choice and competition among communications service providers.”

Given the NANC and NAPM’s inherent conflicts of interest concerning consumer choice and competition, it is clear that the Commission itself must take an active role in ensuring both transparency and public outreach and engagement during the transition process and – especially – concerning public notice prior to full Commission approval of the contract negotiated by NAPM. Unfortunately, the Commission’s *Order* provides little direction in this regard other than stating generally that the Transition Oversight Plan should include, *inter alia*, “stakeholder

¹⁰ *Id.* at 4-5.

outreach and education (with emphasis on smaller providers).”¹¹ OTI recommends that the Wireline Competition Bureau, acting in its oversight role, should scrutinize NAPM’s monthly status reports on the transition with an eye to ensuring that there is adequate outreach, education and opportunities for engagement by both the general public and smaller carriers.

For example, NARUC hosted a recent briefing in D.C. at which representatives of NAPM, Telcordia and Neustar gave an overview of the expected transition process and took questions. The Wireline Bureau could convene and widely notice a more general roundtable and discussion along these lines at the Commission and invite a wider variety of stakeholders – including small carriers and consumer groups – to offer their own perspective and have an opportunity to ask questions. The Bureau should then consider if a similar public briefing and discussion should be convened in each of the seven local number portability regions, so that regional providers, regulators, consumer advocates and other local stakeholders can more readily participate.

IV. COMMISSION OVERSIGHT SHOULD BE PRO-ACTIVE AND INCLUDE NOTICE AND COMMENT BEFORE FINAL APPROVAL OF THE CONTRACT

Prior to adoption of the *LNPA Selection Order*, OTI proposed that the Commission appoint “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” for small carriers and consumers. We also suggested that such an intermediary can also “serve as a sort of referee to arbitrate and recommend the resolution of any disputes between the incumbent and new

¹¹ *Order* at ¶ 159.

LNPA.”¹² OTI is therefore pleased to see that the *Transition Oversight Plan*, provides that “[a]s directed by the FCC, the NAPM is hiring an independent third party with communications infrastructure, project management, and change management experience . . . to assist the NAPM LLC in overseeing the transition . . .”¹³ While an expert transition manager is likely to be very beneficial to most stakeholders and to a smooth transition, because the NAPM is apparently choosing this supposedly “independent” manager, OTI recommends that the Wireline Competition Bureau take an active and objective role in vetting and ultimately communicating directly with the Transition Oversight Manager to ensure that individual (and/or firm) is objectively qualified, truly independent of the dominant telcos, and has a free and open channel of communication with the Bureau and other FCC staff monitoring the transition.

OTI also recommended that the Commission “put the negotiated contract and its scope of work out for public notice and comment prior to finalizing it.” We stated that because “the precise scope of the LNPA contract is almost completely unknown at this time to most stakeholders, . . . [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 revisit certain provisions that stakeholders can make a persuasive case need to be corrected, clarified or renegotiated.”¹⁴

We were therefore pleased to see that although the *LNPA Selection Order* appropriately delegates the negotiation of the terms of the LNPA contract to NAPM – “with Commission oversight” – the *Order* also provides that “the NAPM shall submit the contract and Code of Conduct to the Commission for review and approval,” presumably by a vote of the full

¹² *Ex Parte* Letter from Michael Calabrese, Director, Wireless Future 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, at 3 (filed Mar. 18, 2015).

¹³ *Transition Oversight Plan* at 1.

¹⁴ *Ex Parte* Letter from Michael Calabrese, *supra* note 11, at 3.

Commission.¹⁵ However, it is not clear from either the *Order* or the *Transition Plan* whether the contract, once negotiated by NAPM, will be put out for public notice and comment prior to the Commission's vote to approve it.

OTI strongly recommends that the final contract be approved by a vote of the full Commission and only after a period of public notice and input. The LNPA selection process to date has been blanketed in secrecy and redactions, due to competitive bidding between two combative parties. However, once it comes down to final approval by a federal agency of a contract with terms that directly impact consumers and competition – and a price tag that will ultimately be paid by those same consumers – the Commission should ensure that the public is fully informed and that the agency is informed by the views of diverse stakeholders in addition to NAPM and NANC.

V. CONCLUSION

Over the years the LNPA's role has evolved into much more than a routine number porting service between telecom providers. The LNPA has become a significant player in a large but delicate ecosystem of telecom competition, public safety, technological evolution and consumer welfare. OTI generally supports the concept for a *Transition Oversight Plan* filed by the NAPM. However, as outlined above, consumer interests are completely absent from NAPM's *Plan*, making it particularly important that the Commission play a proactive role in monitoring the transition, ensuring the independence of the Transition Oversight Manager, addressing the additional transition risks that fall on consumers (and not just on carriers), facilitating outreach and engagement of consumer advocates and the general public and, finally, making clear that the final terms of the LNPA contract negotiated by NAPM is disclosed to all stakeholders and to the general public for comment before the full Commission votes on whether to approve or amend it.

¹⁵ *LNPA Selection Order* at ¶ 193.

Respectfully Submitted,

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May 21, 2015