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March 2, 2016

Ex Parte

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

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

Dear Ms. Dortch:

On February 29, 2016, Michael Calabrese on behalf of the Open Technology Institute at New America¹ and the undersigned on behalf of the LNP Alliance² (together, the “Parties”) met with Rebekah Goodheart, Wireline Legal Advisor to Commissioner Clyburn, to urge the Commission to adopt a significantly more open and transparent process to transition to a potentially new Local Number Portability Administrator (“LNPA”) (the “LNPA Transition”).

The Parties represent consumers and small to mid-sized companies that are not members of the North American Portability Management LLC (“NAPM”). While NAPM has boasted the participation of supposedly smaller, “competitive” carriers like Level 3 and XO, the former had revenues of over \$8B in 2015³ and XO, which headed the Selection Working Group, is now being acquired by Verizon. The hundreds of smaller, competitive carriers currently have no voice in the LNPA Transition, making it all the more critical for the Commission to establish a significantly more open and transparent LNPA Transition process.

¹ New America’s Open Technology Institute is a non-profit policy institute that develops and advocates policies that promote universal, ubiquitous and affordable access to communications technology, including more robust mobile market competition.

² The LNP Alliance is a consortium of small and medium-sized providers that currently consists of Comspan Communications, Inc., Telnet Worldwide, Inc., the Northwest Telecommunications Association (“NWTa”), and the Michigan Internet and Telecommunications Alliance (“MITA”). The LNP Alliance is focused on ensuring that the LNPA selection process takes into account the concerns of its S/M provider members and other similarly situated providers.

³ Yahoo Finance website, <http://finance.yahoo.com/q/ks?s=LVLT> (last viewed March 2, 2016).

In the meeting, we discussed the fact that, while we have requested a copy of the Transition Oversight Manager (“TOM”) Engagement Letter executed in August 2015 (“TOM Letter” or “Letter”), we instead only received a summary of that agreement (“Summary”). After receiving the Summary on February 16, we immediately requested of the NAPM: 1) a full copy of the TOM Engagement Letter; and 2) the reason why, after paying for our proportional share of the TOM’s services, we are being relegated to a mere summary of that Letter.⁴

The Summary raised many questions as to issues that the NAPM appears to have neglected to address. There is no mention in the Summary, for example, about the TOM’s role in controlling costs for consumers and smaller carriers. The LNPA Transition will not be a success unless costs for smaller carriers remain the same or are reduced. Had the Parties had input into the Letter, we certainly would have ensured that the TOM had incentives to ensure carrier and consumer costs remained in check. Yet either no such incentives exist or the Summary is incomplete.

There is also no mention in the Summary as to the TOM’s role in driving the IP Transition forward by incorporating IP capabilities into the NPAC. In fact, there is no mention at all in the Summary of the IP Transition. Again, had smaller carriers been given input into the TOM Letter, we would have ensured that the IP Transition was central to the TOM’s responsibilities. It appears that the NAPM carriers have neglected this issue, as well. The Parties urge the Commission to weigh in to require disclosure of the TOM Letter to the carriers and consumers paying for the services being provided by the TOM, whatever they may be.

The Parties also emphasized the potential that the LNPA Transition could delay the IP Transition. There is good reason to believe that the largest carriers are using the LNPA Transition to create further delay in the completion of the IP Transition across the industry. While smaller, IP-centric carriers would have ensured that the IP Transition was integrated into the LNPA Transition, there is no public evidence that the TOM has been given any direction by the NAPM carriers to do so. Again, the Commission should step in to ensure that the TOM actively participates in the various working groups that are implementing IP Transition porting and routing, and is not left waiting on the sidelines.

It already appears that the LNPA Transition will delay the completion of the IP Transition. Neustar had been taking concrete steps to forge ahead with implementing the IP Transition in the NPAC by, for example, creating optional IP-related NPAC fields. Neustar has no incentive to continue this work which has been brought to a standstill, but at the same time there is no sign of any IP Transition initiatives by the TOM or by iconectiv, which has not yet entered into a contract. The TOM has indicated that “NPAC updates required for IP transition . . . will be incorporated when available,” but that “interfaces

⁴ Based on e-mails from the TOM, we are expecting a response to these questions later this week.

are expected to be consistent with what is in place today.”⁵ This suggests no initiative on the part of the TOM or the NAPM to facilitate the IP Transition and, worse yet, that the NPAC interface that results from the LNPA Transition will feature the same interfaces as two years earlier, frozen in time. The Parties urge the Commission to open up the LNPA Transition process to smaller carriers and other pro-consumer and pro-competitive participants so that the LNPA Transition can incorporate and not further delay the IP Transition.

The best way to ensure that the TOM represents the public interest, and not merely NAPM-carrier interests, would have been to make the TOM report directly to the Commission, as originally recommended by OTI. 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.⁶

Given that the TOM is not reporting directly to the Commission, the Commission should ensure that the public interest is represented by making the TOM Letter, and all other work of the TOM, available to the public. In our prior February 16 ex parte, the Parties provided a list of questions posed to the NAPM, including a request to make public all reports, correspondence, and other workpapers generated by the TOM.⁷ If the TOM does not agree to do so, the Commission should require that the TOM make these documents public, as they are produced, so that the public and smaller carriers can have access to the information that is guiding the LNPA Transition. As it stands, the larger NAPM carriers are being given an inside lane, simply by virtue of their size and resources. This is inconsistent with the manner in which the number portability process was initially constituted, by a public and transparent process, open to small and large competitors alike. Given that smaller competitors have a more acute interest in seamless porting activity than larger carriers, it remains critical that smaller carriers are fully engaged in the LNPA Transition.

The Parties also emphasized that the Commission should publicly disclose the iconectiv agreement. The NAPM substantially completed its draft MSA with iconectiv on October 26,

⁵ TOM LNPA Transition Outreach and Education Plan (TOEP) Frequently Asked Questions, at 2, NAPM Website, https://www.napmlc.org/Docs/npac/ref_docs/REP_20160217_TOEP%20FAQ_v1.0.pdf (last viewed March 2, 2016) (“*TOM FAQs*”).

⁶ *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). *See also* 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 to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 07-149, 09-109; CC Docket No. 95-116 (filed Mar. 9, 2015).

⁷ Letter from The LNP Alliance, FISPA, Public Knowledge and OTI at New America to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 95-116; WC Docket Nos. 09-109 and 07-149, at 2 and Att. A (Feb. 16, 2016).

2015 (“Proposed Agreement” or “Agreement”).⁸ While the largest, billion-dollar revenue carriers have had the Proposed Agreement for over four months, smaller carriers and the public at large have no visibility into that Agreement. It’s not clear why smaller carriers and consumers should not be able to review the Proposed Agreement at this time. At a minimum, the Commission should ensure that there is ample time for public review of the Agreement before it is approved by the Commission. Commission staff indicated at the January NANC meeting that at least portions of the Proposed Agreement will be released to the public. In our meeting, we requested that Commissioner Clyburn ensure that the full Proposed Agreement be released. If there are portions that cannot be released for national security or other reasons, we requested that the Commission provide a general description of those sections that are being shielded from the public and the reason for nondisclosure.

On a final note, the Parties remain very concerned about the proposed timing of the LNPA Transition in light of the fact that, as of March 2016, there is little to no meaningful LNPA Transition information available to consumers and smaller carriers. According to the TOM, “Go-Live activities will begin in the first half of 2017 and continue into the second half of 2017,” “and planning for the transition is well underway.”⁹ As the TOM itself notes, these timeframes are “dependent on completion of contracts and final agreement on requirements.”¹⁰ Indeed, the Parties believe it is far too early in the public review process to set 2017 completion timeframes. There has been no public review of the TOM Letter and no one outside the NAPM has had any visibility into the Proposed Agreement. The NAPM has recognized in the Transition Oversight Plan (“TOP”) that the transition timeline must be reassessed at “strategic check points.”¹¹ The Parties urge the Commission to review the timelines currently proposed by the TOM and require that they be readjusted so that small carriers and consumers can have critical input into the LNPA Transition Process. Non-NAPM carriers require ample time for the budgeting, planning, testing, and implementation that will be necessary once they finally become privy to the details of the TOM Letter and the Proposed Agreement.

⁸ Letter from Todd D. Daubert to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 95-116; WC Docket Nos. 09-109 and 07-149, at 2 (Jan. 28, 2016).

⁹ *TOM FAQs* at 2.

¹⁰ *Id.* at 3.

¹¹ *Telephone Number Portability, et al.*, CC Docket No. 95-116; WC Docket Nos. 09-109 and 07-149, The North American Portability Transition Oversight Plan, Section III (Aug. 31, 2016).

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As required by Section 1.1206(b), this *ex parte* notification is being filed electronically for inclusion in the public record of the above-referenced proceedings. Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

/s/ James C. Falvey

James C. Falvey

cc: Rebekah Goodheart
Dianne Cornell
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