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March 31, 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 America,¹ and the undersigned on behalf of the LNP Alliance² (together, the “Parties”) met with Kris Monteith, Marilyn Jones, Michelle Sclater, Ann Stevens, and Sanford Williams 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”). The Parties continued to urge the Commission to make the draft iconectiv contract (“Proposed Agreement”) public and accessible to consumers and non-NAPM carriers, who have the greatest interest in ensuring that number portability functions seamlessly. The NAPM has been reviewing the iconectiv agreement since before October 2015, when it first signed off on a draft version of the agreement. According to NAPM, the draft iconectiv agreement “was substantially completed on

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.

October 26, 2015.”³ The Parties fail to understand why the NAPM carriers have had access to the Proposed Agreement for, at a minimum, five months longer than non-NAPM carriers. According to the Transition Oversight Manager (“TOM”) at the March 24th NANC meeting, 26% of the participants on the last webinar were small carriers. Yet this substantial block of carriers does not have the same access as the larger carriers to the Proposed Agreement or, for that matter, the TOM Engagement Letter.⁴ No one has ever explained what it is about these two agreements that would require that they be shielded from the public eye, and from review by the smaller carriers with the strongest vested interest in competition and portability. The reflexive response from the NAPM is that in order to see these documents, you should join the NAPM, an organization that costs \$34,000 to join, which smaller carriers have repeatedly said they cannot afford to join, and which nonprofit consumer groups cannot reasonably be expected to join. This tight control of information by the largest carriers is not consistent with transparent and open governance and the Commission should not support the NAPM carriers in this effort.

The Parties noted that the Bureau seems to have been supportive of opening up the process in other ways, including encouraging the TOM to post questions and answers and making the TOM available at upcoming conferences. But the Parties also emphasized the need for an ongoing Commission role in improving transparency. The LNPA, by statute and according to not one but a series of Commission rules, must be an independent, neutral third party administrator.⁵ Broadening access to the TOM is therefore not only beneficial to smaller competitors, competition, and consumers but is also a statutory and regulatory prerogative.

It was our understanding from the meeting that the Bureau intends to improve transparency by ensuring that the Proposed Agreement will be placed in the record, subject to a protective order, while it is being circulated and reviewed by the Commission for approval. The Parties urged the Commission to ensure that there is adequate time during this period for smaller carriers and the public at large to review the Proposed Agreement and have an opportunity for comment, such that recommended changes can be implemented. The Parties remain concerned that this process could move too quickly for meaningful input and recommended adequate time for review and input in this phase. In addition, the Parties requested that, to the extent that portions of the Proposed Agreement are redacted, that the subject matter of those sections be made public. For example, while it would make sense for sections relating to national or homeland security to be redacted, sections on the IP Transition should not be. The public should

³ Letter from 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 (March 31, 2016).

⁴ A summary of the TOM Engagement Letter was released on February 16, 2016, but for reasons not understood by the Parties, the NAPM and the TOM have not released the Letter itself.

⁵ See, e.g., 47 U.S.C. § 251(e); 47 C.F.R. § 52.12(a)(1) (the LNPA must be impartial); 47 C.F.R. § 52.21(k) (the LNPA must be independent); 47 C.F.R. § 52.21(a)(1)(iii) (the LNPA must not be subject to undue influence); 47 C.F.R. § 52.26(a) (prohibiting the LNPA from affiliation with a telecom equipment manufacturer); 47 C.F.R. § 52.12(a)(1) (prohibiting the LNPA from being aligned with a particular industry segment).

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not be left guessing as to the high-level subject matter of redacted sections. In addition, Commission staff should independently review which portions should be redacted.

The Parties also raised the concern, shared by others at the March 24th NANC meeting, that the current timetable for implementation very likely needs to be adjusted. Given that the Proposed Agreement has not been reviewed by many and has not been finalized, the current timeframes would lead to premature implementation of the new LNPA platform. The LNPA Transition should also incorporate platform capabilities to facilitate the IP Transition in order to ensure that IP Transition is not delayed until after the LNPA Transition is complete. The Parties encouraged the Commission to review the LNPA Transition timetable to ensure that the process is not rushed to conclusion in order to meet artificial deadlines.

The Parties also discussed the various ways in which the LNP Alliance and the Open Technology Institute, as well as other interested parties, could become more involved in what is currently a very insular LNPA Transition process. The Parties are hopeful that by potentially becoming voting members of NANC Working Groups, for example, smaller carriers and consumers can have improved input into the LNPA Transition process. We look forward to improved communication and transparency with the TOM, and the NAPM through these new opportunities.

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: Kris Monteith
Marilyn Jones
Michelle Sclater
Ann Stevens
Sanford Williams
Dianne Cornell
Amy Bender
Nick Degani
Rebekah Goodheart
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Michael Calabrese