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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:

I am writing on behalf of Public Knowledge,¹ the Open Technology Institute at New America² and the LNP Alliance³ (together, the “Parties”) to request that the Commission closely scrutinize the iconectiv Code of Conduct, including iconectiv’s recent edits to that document, as well as the Voting Trust, and to be vigilant in ensuring that there is a significantly more open and transparent process that will permit all users of the National Portability Administration Center (“NPAC”) to review the iconectiv Master Service Agreement (“iconectiv MSA” or “MSA”) currently circulating for Commission approval.

The LNP Alliance and other commenters have been critical in past ex parte filings of engaging a Local Number Portability Administrator (“LNPA”) such as iconectiv that has been owned for years by Ericsson, one of the world’s largest manufacturers of wireless equipment.⁴

¹ Public Knowledge is a non-profit, research and advocacy organization that promotes freedom of expression, an open internet, and access to affordable communications tools and creative works.

² 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.

³ 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.

⁴ Letter from James C. Falvey, counsel to The LNP Alliance, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 95-116; WC Docket Nos. 09-109 (March 19, 2015);

We have indicated in the past that hiring iconectiv as the LNPA runs afoul of the Commission's rules prohibiting the LNPA from being affiliated with a telecommunications equipment manufacturer.⁵ The LNP Alliance has also indicated in past filings that the choice of iconectiv also violates Section 251(e) of the Communications Act and other Commission regulations that require an impartial, independent, and unaligned LNPA.⁶ The Parties share the concerns of the LNPA Alliance that, assuming iconectiv is to take on the role of the LNPA, the Commission must ensure that the safeguards intended to protect the LNPA's impartiality—specifically the Voting Trust and the LNPA Code of Conduct—are tightly constructed to guard against potential undue influence on the LNPA. The Parties urge the Commission to scrutinize recent filings to ensure that these safeguards are not watered down in any way.

Now that the Commission has nonetheless named iconectiv as the next LNPA, it is all the more critical that it scrutinize very carefully the Voting Trust arrangements that will supposedly ensure the independence of iconectiv. If a Voting Trust is to be the solution to iconectiv's impartiality, it is critical that it provide as much separation as possible between iconectiv and Ericsson.

In the same vein, the Parties have scrutinized iconectiv's latest changes to the iconectiv Code of Conduct and we have serious concerns that the Code of Conduct is being watered down in such a way that iconectiv will not have the requisite impartiality, independence, and nonalignment that the Commission's own rules require.⁷ In order to demonstrate these concerns, the Parties attach hereto a redline version of the LNPA Code of Conduct that compares the previously filed version of the LNPA Code of Conduct with the revised version of that Code filed by iconectiv on April 1, 2016. *See* Redline attached hereto as Exhibit A.

The following are the Parties' specific concerns:

- In paragraph 4, iconectiv has excised the term "contractor" from the list of entities that shall not hold any interest that would cause iconectiv to no longer be neutral. The Commission needs to pin down why it is that "contractor" was deleted. It certainly seems that contractors of iconectiv need to be included. In addition, "contractor" should be added in a second time so that it also says "or any dedicated employee of any contractor or subcontractor."

see also Letter from James C. Falvey, counsel to The LNP Alliance, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 95-116; WC Docket Nos. 09-109 (March 26, 2015).

⁵ 47 C.F.R. § 52.26(a) (prohibiting the LNPA from affiliation with a telecom equipment manufacturer);

⁶ 47 C.F.R. § 52.12(a)(1) (prohibiting the LNPA from being aligned with a particular industry segment); 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); *see also* 47 U.S.C. 251(e).

⁷ *Id.*

- Also in paragraph 4, the type of interest that “would cause iconectiv to no longer be neutral” is not defined in any way. It seems that this leaves the decision as to what the extent of such an interest that would cause neutrality issues entirely up to the potentially offending party. This leaves too much room for ambiguity and should be more clearly defined.
- There is a footnote added (footnote 1) that finds that “interests of one percent or less are not cognizable as ownership.” Any stockholder of Ericsson, for example, owning 0.5% of that corporation would still be biased by that interest. Although a small percent of Ericsson, it could still represent a very significant financial figure for the holder. The same could be said for front line employees who hold pensions or other interests in Ericsson. The Commission should fully scrutinize why this change is necessary. (The language regarding mutual funds in the same footnote, by contrast, is completely reasonable and legitimate.)
- In paragraph 7(f), iconectiv deleted the requirement that “No Member [of the iconectiv Board of Directors] shall have an ownership or voting interest of ten percent or greater in any TSP [Telecommunications Service Provider].” Is iconectiv suggesting that a Board member of iconectiv could actually retain a more than 10% ownership interest in a single carrier and still remain on the Board of what is supposed to be a carrier-neutral LNPA? The Commission should drill down on exactly why this deletion was requested and, unless this requirement is somehow duplicative of other identical requirement, this deletion cannot be accepted. The fact that this deletion was even recommended by iconectiv undermines the Parties’ confidence in iconectiv’s understanding of a neutral and independent LNPA.
- With respect to paragraph 8, the language permits any iconectiv employee that was already participating in an Ericsson pension plan as of March 25, 2015 to retain that pension plan. There should not be any scenario where an iconectiv employee involved in core LNPA services holds an Ericsson pension.⁸
- The beginning of paragraph 10(c) should not apply just to SungardAS “employees,” but should be extended, as in paragraph 4, also to “contractors, officers, directors, or any dedicated employee of any contractor or subcontractor”

There is a further issue with the Code of Ethics which is that the Commission needs to ensure that the Code, and the Voting Trust, are fully adopted and implemented by iconectiv before any carrier data is transferred from Neustar to iconectiv. LNP Alliance carriers routinely provide their numbering information to Neustar with the assurance that Neustar is neutral. Carriers are themselves bound by restrictions on the use of such data such as the Customer Proprietary Network Information (“CPNI”) regulations. Carriers need to have assurances that their information will not pass through Neustar to iconectiv before iconectiv is certified neutral by the Commission with all appropriate safeguards adopted and implemented.

⁸ The intent, of course, is not to deprive any employee of their hard-earned pension, but to preclude Ericsson pension holders from becoming employees of iconectiv.

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In addition to these concerns regarding the Code of Ethics, the Parties urge the Commission to adopt a more transparent and open process for the review of the iconectiv MSA. While larger carriers that have joined the North American Portability Management LLC (“NAPM”) have had access to the MSA for over seven months, smaller carriers and consumers have only recently been given an avenue to review the MSA. But even that avenue is a very difficult one, impeded by the fact that iconectiv has designated the entire contract as Confidential pursuant to the Commission’s *Second Protective Order* (“SPO”). This makes it impossible for a small carrier’s key technical personnel involved in numbering administration to review the contract at all. The reason is that the SPO is structured in such a way that if a small carrier employee will be engaged in negotiating with iconectiv for LNPA services, they cannot review the master MSA that presumably will play a heavy role in governing LNPA administration.

To compound this problem, the Commission has immediately placed the iconectiv MSA on circulation for the approval of the Commissioners. This creates the possibility of the MSA being approved before any smaller carriers or consumers have had any meaningful opportunity to review the MSA. LNP Alliance consultants that have reviewed the MSA have found issues that need to be corrected, but cannot discuss them with their clients. The Commission should take the item off circulation, or at a minimum designate a schedule for the time frames for the review and ultimate Commission approval of the MSA.

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
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