

April 25, 2016

VIA ECFS

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

Re: Neustar's Application for Review of the Second Protective Order, Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration, WC Docket 07-149, WC Docket 09-109, CC Docket 95-116

Dear Secretary Dortch:

The North American Portability Management LLC ("NAPM LLC"), by its attorneys, respectfully urges the Federal Communications Commission ("FCC" or "Commission") promptly to deny Neustar, Inc.'s Application for Review of the Wireline Competition Bureau's ("Bureau") March 31, 2016 Second Protective Order.¹

Neustar's Application is now moot, because the NAPM LLC and Telcordia Technologies, Inc. d/b/a/iconectiv ("iconectiv") have filed a new version of the Master Services Agreement (the "new MSA") with fewer redactions than the original filing contained. Also, there is no merit to Neustar's challenge to the Second Protective Order, which is not supported by any facts, as explained in more detail below. Indeed, the irony of Neustar's position is truly rich considering the previous arguments that Neustar itself made in this same docket when iconectiv sought greater access to Neustar information, including, but not limited to, information relating to the current Master Services Agreement between Neustar and the NAPM LLC (the "old MSA"). Just as the Commission promptly denied iconectiv's arguments for additional access to information relating to the old MSA, the Commission should now promptly reject Neustar's challenge to the Second Protective Order. The NAPM LLC also respectfully urges the Commission not to let Neustar's filing become a distraction from promptly approving the new MSA, particularly in light of the critical importance to the entire industry – apart from Neustar – of moving forward with transition efforts as soon as possible.

Neustar Ignored the Process Established by the Second Protective Order

Rather than simply following the procedure for challenging designations of specific materials as Confidential or Highly Confidential,² which could have fully addressed the concerns that Neustar has raised, Neustar inexplicably challenged the Second Protective Order as flawed. Neustar cannot credibly claim that its

¹ Second Protective Order, *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, DA 16-344 (rel. Mar. 31, 2016) ("*Second Protective Order*").

² See *id.* ¶ 5 (providing in relevant part that "[a]ny person wishing to challenge the designation of a document, portion of a document or information as Confidential or Highly Confidential must file such a challenge at the Commission and serve it on the Submitting Party. The Submitting Party must file any reply within three business days, and include a justification for treating the information as Confidential or Highly Confidential, as appropriate.").

outside counsel and outside consultants are incapable of identifying specific portions of the MSA that Neustar believes should not be designated as Confidential or Highly Confidential.³ If Neustar had followed the applicable procedure for challenging designations, iconectiv and the NAPM LLC would have considered Neustar's position in good faith and, as appropriate, amended the designations of the materials, just as iconectiv and the NAPM LLC have voluntarily done now despite Neustar's intentional failure to follow the procedures. In short, there is nothing wrong with the Second Protective Order: any problems lie solely with Neustar's refusal to follow the procedures it established.

Unfortunately, the most rational explanation for Neustar's behavior is a desire to delay the transition process despite its many statements to the contrary. The NAPM LLC therefore respectfully urges the Commission to deny Neustar's Application and approve the new MSA as soon as possible so that the entire industry can begin benefitting from significant cost savings to be gained from the new MSA as soon as possible.

The Protective Order Does Not Create Any Risks to the Transition Process

The technical requirements for the MSA were developed with industry input and Commission approval.⁴ The purpose of the MSA, a legal document, is to require iconectiv to meet those previously reviewed and approved technical requirements at the price iconectiv submitted in response to the Request for Proposal.⁵ Therefore, Neustar's claim that none of its outside counsel or outside consultants can understand the MSA simply is not credible.⁶

Moreover, Neustar's claim that there is no need to limit access to Highly Confidential Information only to outside counsel of Record and outside consultants who do not provide "advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or in a business relationship with the Submitting Party" strains credulity since it is Neustar itself that is urging the courts and the Commission to require a rebid.⁷ Disclosing the Highly Confidential Information beyond those permitted by the Second Protective Order would make it impossible to engage in the rebid that Neustar seeks, because doing so would reveal the terms of a competitor's bid (*i.e.*, iconectiv's bid) to other bidders (*i.e.*, Neustar and anyone else

³ See, e.g., Acknowledgement of Confidentiality of Cheryl T. Smith, Principal, Smith & Associates, *Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration, et al.*, WC Docket Nos. 07-149, 09-109 and CC Docket No. 95-116 (Apr. 11, 2016); See also <http://smithandassociates.us.com/people> (biography of Cheryl T. Smith); See, e.g., Acknowledgement of Confidentiality of Stewart A. Baker, Partner, Steptoe & Johnson, *Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration, et al.*, WC Docket Nos. 07-149, 09-109 and CC Docket No. 95-116 (Apr. 1, 2016); See also http://www.steptoec.com/professionals-Stewart_Baker.html (biography of Stewart Baker).

⁴ See, e.g., Order, *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., 30 FCC Rcd 3082 (2015) ("*LNPA Order*") (summarizing the RFP process, approving the recommendation of the North American Numbering Council that Telcordia Technologies, Inc. serve as the next local number portability administrator, and establishing a process for negotiating specific contract provisions).

⁵ The portions of the MSA that go into greater detail about the type of technical requirements that some outside counsel and outside consultants may not understand involve data security, but these portions must remain Highly Confidential in order to protect the integrity of critical infrastructure in our Nation's communications networks.

⁶ See, e.g., Notice of Ex Parte Presentation by Neustar at 1-2, WC Docket Nos. 07-149, 09-109 and CC Docket No. 95-116 (Apr. 18, 2016) ("*Notice*") (claiming that lawyers and outside consultants cannot understand the MSA).

⁷ *Second Protective Order* ¶ 3. See generally, e.g., *id.*

who might participate). To be clear, there is absolutely no reason for any additional rounds of bidding, as will undoubtedly be clear to all once Neustar's legal challenges have been exhausted and the relevant facts are revealed. However, the NAPM LLC must continue to preserve the integrity of the bidding and selection process until Neustar's legal challenges have been exhausted and the selection process is complete, which is the sole reason why some portions of the MSA have been designated as Highly Confidential pursuant to the Second Protective Order.

Neustar's further claim that the Second Protective Order presents risks to the transition because it allegedly will be too hard to change milestones and other important dates once the new MSA is signed is utter nonsense.⁸ The relevant milestones can – of course – be adjusted as necessary to mitigate risk without amending the MSA, and these mechanisms can be verified, and *understood*, by all reviewing parties pursuant to the Second Protective Order, including Neustar's outside counsel and outside consultants.

The Second Protective Order Will Not Deprive Neustar of Any Information Necessary for Transition

Neustar argues that the Second Protective Order deprives Neustar of information it needs in order to participate in the transition process.⁹ This claim is built upon the false premise that review of the MSA is the only potential source of the information that Neustar needs. To the contrary, the NAPM LLC and the Transition Oversight Manager ("TOM") can and will provide Neustar with all of the information Neustar needs to accomplish its role in the transition process, including all relevant information about Ancillary Services and the ELEP transition.¹⁰ Neustar has a legal duty to protect the confidential information that the NAPM LLC, whether directly or indirectly through the TOM, provides to Neustar so that Neustar can honor its obligation under the Commission's orders and the old MSA to assist in the transition process. To the extent Neustar means what it repeatedly says (*i.e.*, that it intends to cooperate fully in the transition process), Neustar will enter into any additional confidentiality agreements with the NAPM LLC, iconectiv, the TOM and any other party that may be necessary to facilitate the sharing of confidential information among the relevant parties. For these reasons, further access to the MSA by Neustar is not necessary in any way to facilitate the transition, because direct means for providing Neustar with the necessary information either exist today or they will be created so long as Neustar honors its legal obligations and its claims that it will act in good faith.¹¹

Neustar's claim that it has not been kept "in the loop" and therefore must have additional access to the new MSA so that it can participate in the transition is blatantly false considering that Neustar is currently billing the industry approximately \$500K each month for transition services.¹² The simple truth is that Neustar can access each and every fact it needs for the transition without ever having to see the new MSA itself. Of course, the real reason why Neustar seeks additional access to the new MSA is that Neustar hopes to find support for its legal

⁸ See, e.g., Notice at 2.

⁹ See Application of Neustar, Inc. for Review of Second Protective Order at 7-10, *Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration, et al.*, WC Docket Nos. 07-149, 09-109 and CC Docket No. 95-116 (Apr. 11, 2016) ("*Application*").

¹⁰ See *id.* at 8-10.

¹¹ To the extent Neustar's lack of access to information is due to Neustar's refusal to enter into necessary non-discrimination agreements, the remedy would be to order Neustar to honor its existing legal obligations under the FCC's orders and the old MSA rather than to amend the Second Protective Order.

¹² Letter from Thomas J. Navin and Aaron M. Panner to Thomas Wheeler, Chairman, FCC and Commissioners at 1, *Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration, et al.*, WC Docket Nos. 07-149, 09-109 and CC Docket No. 95-116 (Apr. 11, 2016).

challenge to the selection process, or, at a minimum, an additional means for delaying transition. However, Neustar's outside counsel and outside consultants have more than ample access to the MSA pursuant to the Second Protective Order in order to achieve Neustar's goals. Accordingly, Neustar's claims about the impact of the Second Protective Order on the transition process are patently false.

Contrary to its Current Claims, Neustar Understands Exactly Why Confidentiality Is Critical

Neustar's Application for Review appears to be little more than an attempt to delay the transition process. One needs to look no further than to Neustar's own filings in the above-referenced dockets when iconectiv was seeking access to Neustar's information to confirm that even Neustar likely does not believe the arguments it now makes. Indeed, Neustar now is the party acting like the "disgruntled vendor" seeking to gain access to proprietary business information without providing any valid business justification.¹³ As recently as 2011, Neustar itself objected "to the sharing of Neustar's proprietary information with any competitor as part of the RFI/RFP process," stating that it would "use all appropriate and legal means to protect its confidential proprietary information."¹⁴

Before Neustar became the "disgruntled Vendor", Neustar accurately explained why the NAPM LLC has more incentive than anyone to negotiate a good deal on behalf of the industry:

[T]his is an example of carriers solving a complex technological problem to the benefit of consumers. The Commission should applaud the industry efforts to work together rather than accept the misleading arguments of a disgruntled vendor to upend a process that has served the industry and consumers well for over a decade. . . . In fact, the NAPM LLC is comprised of some of the world's largest and most sophisticated carriers, including AT&T, Comcast, CenturyLink, Qwest, Sprint Nextel, T-Mobile, Verizon, and XO Communications. NAPM LLC members are experienced negotiators focused on acting in the best interests of their companies and their customers in obtaining the highest quality of service and lowest price for number portability administration.¹⁵

As Neustar has further explained, "it is exactly because the NAPM LLC represents, and is comprised of, carriers and – as the Commission has noted – possesses the most expertise with respect to number portability that the

¹³ Opposition of Neustar, Inc. at 25, *Petition of Telcordia Technologies Inc. to 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*, WCB Docket No. 09-109 (Sept. 8, 2009) (accusing Telcordia of being a "disgruntled Vendor") ("*Opposition*"); see also *id.* ("Telcordia . . . has the goal of disrupting this process and preventing the NAPM LLC's efforts to evolve the NPAC database to ensure competitive options for carriers seeking to route traffic using Internet Protocol technology. The Commission must reject Telcordia's self-serving attempts to thwart the very competition and technological advancement envisioned by Congress and implemented by the Commission.").

¹⁴ See, e.g., Letter from Aaron M. Panner to Geoffrey Why, Tri-Chair, North American Numbering Council Selection Working Group, Tiki Gaugler, Tri-Chair, North American Numbering Council Selection Working Group, and Ann Berkowitz, Tri-Chair, North American Numbering Council Selection Working Group, at 1-2, in re *Request to Obtain Neustar's Proprietary Information*, WC Docket No. 07-149, ("*Request*") (Nov. 14, 2011). In fact, Neustar's own arguments in 2011 undermine their present efforts to limit confidentiality. When Telcordia was seeking access to certain proprietary Neustar information, Neustar objected, stating "There is accordingly no basis for Telcordia's suggestion that it stands at any disadvantage relative to Neustar (or any other competitor) because it lacks proprietary details of the present NPAC system." *Id.* at 2. Indeed, Neustar explained that it "is especially offensive to notions of due process and appropriate Commission oversight that it is Telcordia crying foul and claiming it has been harmed." *Opposition* at 3. The same can be said about Neustar today.

¹⁵ *Opposition* at 4, 25.

Commission should continue to defer to the NAPM LLC's decision[s]"¹⁶ Neustar similarly supported the process by which the technical requirements were developed:

The Bureau delegated authority to the NANC to develop and implement, in cooperation with the NAPM LLC, a process for the selection of an LNPA. The Consensus Proposal, also included in the Order, represents a significant amount of work on the part of the NANC Chair and the NAPM LLC, and was unanimously ratified by the entire NANC at its March 9, 2011 meeting. Neustar intends to participate in the LNPA selection process set out in the Consensus Proposal and hopes to be selected to continue serving as the LNPA. . . . As the Commission is aware, the NAPM LLC, under the oversight of the NANC, has been responsible for the direct, day-to-day management of the NPAC, the LNPA, and the contract that governs the LNPA's activities since the inception of number portability. Contrary to a misunderstanding expressed in the record, the NPAC is in no way a federally-funded endeavor. In fact, the NPAC contract is between the LNPA and the NAPM LLC, and the database is entirely funded through fees paid by telecommunications and interconnected VoIP service providers. All of these service providers are eligible to become members of the NAPM LLC. Indeed, the entities that pay the vast bulk of the NPAC's costs are represented through NAPM LLC membership, creating a significant incentive for the NAPM LLC to ensure that the NPAC is run as efficiently and pro-competitively as possible. Because it is not a federally-funded endeavor, the LNPA contracts should remain private contracts negotiated and entered into between private entities, subject to the existing levels of oversight by the NANC and the Commission.¹⁷

Moreover, in seeking to deny Telcordia access to Neustar's proprietary information, Neustar itself enunciated this harm of disclosing the information of one competitor to other potential competitors:

The NAPM LLC has made available extensive technical documentation concerning the requirements for NPAC services. See <https://www.napmlc.org/pages/npacrfu/npacrfp.aspx>. . . . By contrast, the harm to the competitive bidding process and to Neustar from the disclosure of the information that Telcordia apparently seeks would be substantial. The particular combination of hardware and software technology implemented by Neustar represents the product of significant investment and is by its nature competitively sensitive and proprietary. The same is true of information regarding Neustar's internal operations processes and procedures. *If that information is disclosed to Telcordia and other potential competitors, they will not only be able improperly to rely on Neustar's innovations in designing their own competitive bid, but they will have less incentive to develop meaningful innovations of their own in response to the RFP.*"¹⁸

The Bureau has a long history of protecting a company's proprietary information, especially when there is no valid business justification for disclosure, and certainly when the purpose of the request is merely to air previously aired grievances. Providing Neustar such access to the proprietary information it seeks would be

¹⁶ Reply Comments of Neustar, Inc. at 21, *Petition of Telcordia Technologies Inc. to 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*, WC Docket No. 09-109; *Telephone Number Portability*, CC Docket No. 95-116 (Mar. 29, 2011).

¹⁷ *Id.* at 2-4 (citations omitted).

¹⁸ *Request* at 2-3 (emphasis added).

unprecedented. Neustar perhaps put it best when it responded to Telcordia's claim that "'only one-bidder – the incumbent – has information' about proprietary aspects of the system that [the incumbent] designed":

That, of course, is true, and is generally true when a customer seeks to renew or to replace a contract with an existing information technology vendor. But there is no unfairness in that: Telcordia and other vendors of highly complex services would likewise object to the disclosure of proprietary information related to those services. *And an RFP process in which all competitors have access to the proprietary information of all the others is no RFP process at all.*¹⁹

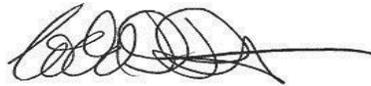
For these reasons, the Commission should reject Neustar's Application for Review, recognizing that this latest ploy by Neustar is "a last-ditch attempt by a disgruntled vendor to use the regulatory process to force its carrier customers to adopt its services after it has not succeeded in the marketplace."²⁰ After having lost in a competitive bidding process, Neustar is now throwing every regulatory roadblock it can to prevent a smooth transition.

This Second Protective Order is clearly necessary to protect legitimate business information and to preserve the integrity of the selection process. Not only has Neustar failed to present any new evidence to support amendment of the Second Protective Order, but Neustar also now purports to be discriminated by the lack of access to the same information it sought to restrict access to in the past.²¹ Therefore, the Commission should promptly deny Neustar's application so that the entire industry and its customers can begin reaping the benefits of the new MSA as soon as possible.

* * *

Please contact the undersigned if you have any questions or would like any additional information about the issues discussed herein.

Respectfully submitted,



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Counsel to the NAPM LLC

¹⁹ *Id.* (emphasis added).

²⁰ Opposition at 25.

²¹ See generally, e.g., Request.