

May 4, 2016

Ex Parte

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

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

Dear Ms. Dortch:

I write to respond to Neustar's *ex parte* of May 2, 2016. In its letter, Neustar asks the Commission to require Telcordia to file in the public record certain communications related to its contract negotiations with the NAPM LLC. The request is meritless because the communications are irrelevant to the remaining issues in this proceeding and because they are exempt from the Commission's *ex parte* rules.

The communications relate to code that Telcordia began developing prior to negotiating its Master Services Agreement with the NAPM. Before the Commission approved Telcordia's selection as the Administrator of local number portability, Telcordia voluntarily (and entirely at its own risk) began to develop code for the NPAC in order to facilitate a speedy transition. At the time Telcordia began to develop this code, the Commission had not yet issued its March 2016 *Selection Order*, and not all security-related requirements had been finalized. During contract negotiations with NAPM, Telcordia discussed this pre-contract code development work with both the NAPM and the Commission staff, and the parties agreed that Telcordia would discard the code and start entirely anew. These discussions were consistent with the *Selection Order*, which recognized that there would be a need for post-selection mitigation and collaboration regarding security terms.¹

¹ *Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Admin.*, Order, FCC 15-35, 30 FCC Rcd. 3082, 3123 ¶ 85 (2015) ("Consequently, regardless of the bidder selected, all security requirements, policies, and procedures will have to be met and, as required, mitigated to our satisfaction before we will approve the LNPA contract. Commenters recognize and support the need for post-selection mitigation. These requirements, policies, and procedures will be addressed in the post-award phase in a collaborative effort among all necessary parties."); *id.*, 3164 ¶ 194 ("We direct the Bureau, in consultation with Public Safety and Homeland Security Bureau, to work with the NAPM to ensure that the LNPA contract contains terms and conditions necessary to ensure that effective public safety services and law enforcement and national security operations are supported, and that any and all national security issues are addressed and mitigated to our satisfaction.").

These communications about pre-contract work that has been completely discarded and will never be used in the NPAC are completely irrelevant to the remaining issue in this proceeding—whether the Master Services Agreement is consistent with the March 2015 *Selection Order*. Moreover, the communications are also plainly exempt from the Commission’s *ex parte* rules. As Neustar concedes, the Bureau has modified the *ex parte* rules in this proceeding so that *ex parte* presentations to the Commission regarding “communications and meetings on contract negotiations between NAPM and Telcordia” need not be filed in the docket.² The question of whether Telcordia would use or discard previously developed code arose through contract negotiations related to security requirements for the MSA and had to be resolved in order to reach a final MSA. Moreover, Telcordia consulted with the General Counsel’s office about its disclosure obligations and was advised that these communications were not subject to the *ex parte* rules. Neustar attempts to characterize the *ex parte* presentations as communications about Telcordia’s “compliance with the *Selection Order*,” but communications about code written before Telcordia signed any contract and which will never be used in the NPAC do not raise any issues about compliance with the *Selection Order*.

Finally, Neustar is simply wrong when it claims that Telcordia’s communications regarding contract negotiation somehow violated its rights to due process. For this argument, Neustar relies on *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 15 (D.C. Cir. 1977), which limits undisclosed *ex parte* contacts in an informal rulemaking. But the D.C. Circuit has clarified that *Home Box Office*’s restrictions on *ex parte* contacts apply “only to a rulemaking” and not to an informal adjudication—especially one involving “competitive negotiation procedures.”³ Neustar also cites *U.S. Lines, Inc. v. Fed. Mar. Comm’n*, 584 F.2d 519, 539–40 (D.C. Cir. 1978) for its claim that *ex parte* contacts violate due process, but the D.C. Circuit has held that that case has no application when, as here, “no statute or regulation requires [the agency] to afford interested parties the opportunity to submit comments.”⁴ Here, as in that case, whether to permit *ex parte* contacts and how to deal with those comments “are procedural decisions that, like the underlying substantive decision, are matters within the agency’s discretion.”⁵

Please let me know if you have any questions.

² *Notice Concerning Ex Parte Status of Commc’ns With Respect to the Local Number Portability Adm’r Selection Proceeding*, Public Notice, DA 15-929, 30 FCC Rcd. 8425 at 8426 (2015).

³ *Elcon Enterprises, Inc. v. Washington Metro. Area Transit Auth.*, 977 F.2d 1472, 1481–82 (D.C. Cir. 1992) (“Indeed, it makes no sense to apply *HBO* to WMATA’s competitive negotiation procedures because under such procedures, in sharp contrast to the APA’s rulemaking procedures, ‘the contracting officer is permitted and encouraged to conduct oral and written discussions with offerors whose proposals vary from the RFP.’” (citation omitted)).

⁴ *Dist. No. 1, Pac. Coast Dist., Marine Engineers’ Beneficial Ass’n v. Mar. Admin.*, 215 F.3d 37, 43 (D.C. Cir. 2000).

⁵ *Id.* (“Here the agency has not granted anyone the right to be free of *ex parte* communications. In the absence of any statutory or self-imposed limitation, we have no jurisdiction to review

Respectfully submitted,



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