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May 4, 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 May 2, 2016, Michael Calabrese, Director, Wireless Future Program at New America's Open Technology Institute,¹ as well as David J. Malfara, Sr. and the undersigned on behalf of the LNP Alliance² (together, the "Parties"), met with Diane Cornell, Special Counsel to Chairman Wheeler, and Kris Monteith, Ann Stevens, and Sanford Williams of the Wireline Competition Bureau to discuss our urgent concerns with the recommendation of the North American Portability Management LLC ("NAPM") that the iconectiv Master Service Agreement ("iconectiv MSA" or "MSA") currently circulating for Commission approval be approved without allowing for time for smaller carriers and the public at large to review the MSA.

The Parties expressed their concern that NAPM is unduly rushing the Commission to approve the MSA that was just released to smaller carriers last week. NAPM acts as if the mere filing of the MSA—2,800 pages including attachments—immediately cures the fact that it has been inaccessible to smaller carriers since the time it was first tentatively approved by the NAPM and filed with the Commission in late October 2015. The Commission was right to

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 ("NWTAA"), 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.

require the public filing of the MSA. But why would the Commission finally require the MSA to be publicly released just last week, only to seal it off again a week later by voting to approve it without sufficient opportunity for review and input from smaller carriers, consumer advocates and the public at large?

If the NAPM's strategy is to pressure smaller carriers, consumer advocates, and even the individual commissioners by threatening additional and substantial delay in the transition if the commissioners do not vote immediately, that strategy is backfiring. The MSA was initially filed by NAPM and iconectiv as entirely Confidential. The Parties have been forced to spend the better part of April trying to get the MSA made public with the grudging concession that operational experts at small carriers can review substantial portions of the MSA. We have also had to rush in to meet with the Wireline Competition Bureau and all five Commissioner offices in order to ensure that the MSA is not approved by the Commission without ample opportunity for public review. Had the MSA been made public by NAPM on April 1, 2016 (or November 1, 2015, for that matter), with a schedule to review and submit comments within sixty (60) days, the process would have been more efficient and orderly. The Commission should take the item off circulation, or at a minimum designate a schedule for the review and ultimate Commission approval of the MSA.

While smaller carriers and the public are potentially being squeezed on their review time as the last parties to receive the MSA, it was iconectiv's own fault that it has fallen behind schedule. NAPM claims that "unless the New MSA is approved very soon, the transition dates may have to be extended beyond the third quarter of 2017, which means that the dates would likely have to be extended into the first quarter of 2018 Therefore, it is critical that the FCC approve the New MSA within days."³

Even if the MSA were approved today, iconectiv has already failed to meet the 3Q17 goal. Attached hereto are the iconectiv timelines from January 2016 and April 2016. In order to meet the artificial deadline of 3Q17, iconectiv has already cut its LNPA Transition intervals for both testing and data migration in half. It's not clear why testing must now start months later than anticipated in January because there was no explanation accompanying the revised timeline and neither iconectiv nor the Transition Oversight Manager ("TOM") has ever released a Gantt Chart—a standard project management tool—showing the interdependencies of the various deadlines.

iconectiv should not be short-circuiting the quality of the LNPA Transition just to meet an artificial deadline. The Parties recommended in the meeting that the TOM require a public Gantt chart, with a known and rigorously enforced interval for each of the obligatory phases of the Transition. The Transition will be completed when each of those phases is completed in due course. The Parties urged the Commission to adopt this approach or risk a hasty and unsuccessful LNPA Transition that will mostly harm smaller carriers which rely on effective

³ 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)

number portability. As Benjamin Franklin said, “By failing to prepare, you are preparing to fail.” In a complex operational transition like this, additional time and planning on the front end will always avoid mistakes and save money when the transition is ultimately implemented.

In addition, delays to date have had nothing to do with smaller carriers. iconectiv reportedly had to rebuild its database from scratch due to its own security lapses. iconectiv and NAPM also delayed the filing of a public version of the MSA from October 2015 through April 2016 so that smaller carriers received the MSA less than a week ago. Smaller carriers and consumers should not pay the price for the failure of iconectiv to plan and implement the Transition on a timely basis.

While we appreciate the Bureau’s efforts to date to make the LNPA Transition more transparent, the Transition process remains deeply flawed in that it largely excludes smaller carriers, consumer advocates, and the public at large. The NAPM has no small-carrier or consumer representatives yet has been designated by the Commission to make all the key decisions on the Transition. It was suggested at the last meeting of the North American Numbering Council (“NANC”) that the NAPM open up its membership by changing its membership dues structure. This should happen sooner rather than later to ensure due process prospectively for smaller carriers and consumers. After all, the essence of the current process is the preparation of a contract that smaller carriers will be required to sign to access the Number Portability Administration Center (“NPAC”). Because the process has been a closed one, smaller carriers have not been able to budget for the added financial and operational impact of the Transition.

In the meantime, the Commission should be aware that there is a distinct possibility that parallel work currently underway in industry standards development organizations could even obsolete the NPAC, replacing it with non-neutral and discriminatory alternatives. If smaller IP-based carriers and consumer advocates were allowed to engage meaningfully in the LNPA Transition, we would be doing more to incorporate the IP Transition into the LNPA Transition and would ensure that the NPAC remains the mandatory neutral database for number porting and routing of traffic.

Ms. Marlene H. Dortch
May 4, 2016
Page 4 of 4

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: Diane Cornell
Kris Monteith
Ann Stevens
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