

May 6, 2016

## Ex Parte

Ms. Marlene 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 Secretary Dortch:

I am writing on behalf of the North American Portability Management LLC (the "NAPM LLC") respectfully to urge the Federal Communications Commission ("FCC" or "Commission"):

- promptly to approve the Master Services Agreement between the NAPM LLC and Telcordia Technologies, Inc. d/b/a iconectiv ("iconectiv") (the "New MSA"); and
- to deny Neustar, Inc.'s Application for Review of the Wireline Competition Bureau's ("Bureau") March 31, 2016 Second Protective Order.<sup>1</sup>

The critical need to approve the MSA in days, rather than weeks, should be abundantly clear once the relevant facts and context for the new MSA are considered. For this reason, I am also writing to dispel some misconceptions about local number portability in general and the New MSA in particular.

First, it is important to focus on what remains the same under the New MSA, and how the New MSA is different from the MSA with Neustar (the "Old MSA"). The New MSA **does not change**:

- The Number Portability Administration Center ("NPAC") Services that NPAC Users receive;

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<sup>1</sup> 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").

- The choices available to NPAC Users for connecting to the NPAC;
- The interfaces between the NPAC Users and the NPAC;<sup>2</sup>
- The process for entering into a NPAC User Agreement to receive NPAC Services;
- The basic terms of the NPAC User Agreements;
- The use of the same NPAC User Agreement by each NPAC User<sup>3</sup>; or
- The process for improving the New MSA over time by working through the LNPA Working Group and the NANC to develop new Statements of Work ("SOW") that the NAPM LLC will negotiate with iconectiv on behalf of the industry.

The New MSA is different from the Old MSA only in ways that benefit consumers, the entire industry, as well as law enforcement, public safety, homeland security and first responders. These improvements include, among other things, the following:

- Significant cost savings for NPAC Users of all sizes that begin immediately upon cutover, as discussed in greater detail below;
- Greatly improved, robust provisions regarding data security and privacy that were developed in coordination with the FCC and various federal agencies, including those responsible for law enforcement and homeland security; and
- The incorporation of the LNPA vendor management lessons learned by the NAPM LLC over the decades since local number portability was first deployed.

Second, the costs that every NPAC User of any size will incur under the New MSA are **dramatically lower** than the costs they currently incur under the Old MSA. Under the Old MSA, the cost of Neustar NPAC Services to the industry is nearly \$500M per year. Indeed, until the NAPM LLC and Neustar executed "Amendment No. 97," the annual Neustar price escalator of 6.5% was stopped, saving the industry millions of dollars a year. Under the New MSA **the cost of iconectiv-provided NPAC Services will be significantly less than half of the cost of Neustar-provided NPAC services, and it will reduce each year over the term of the New MSA.**

The same is true with respect to the costs for connecting to the NPAC that iconectiv controls: the cost of these connections under the New MSA will be half of the cost of the connections under the Old MSA. With respect to the costs that iconectiv does not control, the New MSA will not have a material impact since it did not change the choices available to NPAC Users for connecting to the NPAC. The cost savings will far outweigh the costs of testing, and not every NPAC User will incur testing costs, including those who rely upon Service Bureaus or the Internet to connect to the NPAC. In short, the larger and mid-size NPAC Users that are likely

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<sup>2</sup> See, e.g., Letter from Michael R. Romano and Brian J. Ford to Ms. Marlene H. Dortch, Telephone Number Portability, *et. al.*, CC Docket No. 95-116; WC Docket Nos. 09-109 and 07-149, at 2 (May 5, 2016) (noting "reassurances that the current NPAC interface functionality will remain substantially similar to the functionality as it exists today").

<sup>3</sup> NPAC User Agreements, whether they be Neustar NPAC User Agreements or iconectiv NPAC User agreements, are not individually negotiated so that there can be no discrimination amongst NPAC Users, which undeniably helps small and mid-size NPAC Users.

to incur testing costs will quickly recover those costs through lower rates, while most smaller NPAC Users will not incur testing costs at all. Moreover, testing is not mandatory for any NPAC User, although the NAPM LLC encourages NPAC users relying on connections to the NPAC that can be tested to engage in testing of those connections.

Any suggestion that smaller NPAC Users would incur higher costs under the New MSA is factually wrong, which should be immediately apparent upon review of the New MSA pursuant to the Second Protective Order.<sup>4</sup> All NPAC Users apart from those who pay the *de minimus* \$100 fee pursuant to the FCC's rules will enjoy material cost savings under the New MSA. For these reasons, the cost of delay is significant, and forces the industry to spend tens of millions of dollars unnecessarily for each month that the transition is unnecessarily delayed. Moreover, 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 since the vast majority of service providers voluntarily place a hold on NPAC changes during the Fourth Quarter because of the significant increase in porting activity during the holiday season. Therefore, it is critical that the FCC approve the New MSA within days, not weeks.

Third, the deadline for raising the types of issues currently that a very small group of commenters cite as a reason for delaying approval of the New MSA has long passed. The technical requirements for the MSA were developed long ago with industry input and Commission approval.<sup>5</sup> Similarly, the Commission approved the NANC's unanimous recommendation to accept iconectiv's bid long ago.<sup>6</sup> As such, the time for suggesting changes to the technical requirements or raising concerns about the acceptance of iconectiv's bid has long passed. Indeed, the few *ex parte* filings that raise these types of issues as grounds for

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<sup>4</sup> Letter from James C. Falvey, Counsel to the LNP Alliance, to Ms. Marlene Dortch, Telephone Number Portability, *et. al.*, CC Docket No. 95-116; WC Docket Nos. 09-109 and 07-149, at 2 (Apr. 27, 2016). Mr. Falvey others associated with the LNPA Alliance have had over a month to review the New MSA. In light of the fact that this is the first transition for the NPAC, it is also difficult to understand how the Alliance can credibly claim that their concerns are rooted on their "decades of experience with similar transitions." The fact that the Alliance has mischaracterized the impact of the New MSA on smaller NPAC Users after having a month to review the New MSA strongly suggests that further delay will change nothing apart from unnecessarily increasing the costs that the entire industry incurs, including the smaller NPAC Users on whose behalf the Alliance purports to speak. The last time the LNPA Alliance sought a delay, they claimed that their position reflected grave concerns by law enforcement, and yet the federal agencies, including those responsible for law enforcement and public safety, have fully vetted both iconectiv and the New MSA, and they, like the rest of the industry, are not advocating for any further delay.

<sup>5</sup> See, e.g., *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., Order, 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).

<sup>6</sup> See *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., Order, 30 FCC Rcd 3082 (2015) ("*LNPA Order*").

delaying approval of the New MSA constitute untimely petitions for reconsideration that the Commission must deny.<sup>7</sup>

The sole issue remaining before the Commission at this time is confirming the New MSA requires iconectiv to meet those previously reviewed and approved technical requirements at the price iconectiv submitted in its previously reviewed and approved bid in response to the Request for Proposal.<sup>8</sup> Parties are free to review the New MSA pursuant to the Second Protective Order, but further comment is not required or necessary for the Commission to make this narrow determination. Moreover, even if further changes to the New MSA were desirable, the existing process of working through the LNPA Working Group and the NANC to vet changes and develop SOWs is the proper means for making such changes, not urging the Commission to make changes that have not been considered by the industry through the LNPA Working Group and the NANC.

Fourth, the Commission should not permit a very small group of parties both (1) to ask the Commission to reconsider decisions far after the deadline for filing petitions for reconsideration and (2) to bypass the well-established process for vetting proposed changes to the MSA through the LNPA Working Group and the NANC. Far from being disadvantaged, the LNP Alliance has been able:

- to participate in each and every stage of this proceeding where the issues it now seeks to raise were fully considered and addressed, including this stage where they have already had a month to review the New MSA pursuant to the Second Protective Order;
- to participate in the open, public portions of the NAPM LLC Member meetings;
- to speak to the Transition Oversight Manager ("TOM") about their concerns;
- to communicate directly with the FCC, the TOM and the NAPM LLC about any concerns they may have;
- to attend any of the numerous outreach efforts regarding the transition, including TOEP Webcasts and meetings at industry events, including various NARUC events;
- to join the NAPM LLC, either directly or indirectly through an existing trade association or a new one formed for the purpose of joining the NAPM LLC and splitting the associated costs.

The simple truth is that the NAPM LLC, iconectiv, the TOM and the FCC have listened to each and every concern that the LNP Alliance has expressed since its formation, and taken these

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<sup>7</sup> See 47 C.F.R. § 1.106. Section 1.106(f) of the Commission's Rules require petitions for reconsideration to be filed within 30 days from the date of public notice of the final Commission action.

<sup>8</sup> The sole issue before the Commission now is confirmation by the agency that the NAPM LLC, with Commission oversight, negotiated the proposed terms of the LNPA contract in accordance with the LNPA Order. See LNPA Order ¶ 199 ("Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1-4, 251(e), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 251(e) and 303(r), sections 1.3 and 52.26 of the Commission's rules, 47 C.F.R. §§ 1.3 and 52.26 that the North American Portability Management LLC, with Commission oversight, is directed to negotiate the proposed terms of the LNPA contract in accordance with this Order, and submit the proposed contract to the Commission for approval."). The NAPM LLC has done so.

concerns fully into account when making any decision.<sup>9</sup> Indeed, the structure and the pricing of the NPAC Services do not disadvantage smaller carriers in any way, and any suggestion that further participation by the LNP Alliance would have led to a better, or even materially different, outcome is without merit.

The LNP Alliance's desire to gain the same access to the information that NAPM LLC Members have solely as a result of undertaking the massive amount of work associated with this process, despite the LNP Alliance's unwillingness to undertake the work or share the high costs associated with that work that the NAPM Members incur is unjustifiable. Conducting an RFP and negotiating a contract for critical infrastructure require confidentiality. Those who are willing to do the required work require access to that confidential information, and they undertake a legal obligation to protect any confidential information that could compromise the RFP and subsequent contracting process. The NAPM LLC Members stepped up to the plate to do exactly this, and they have invited anyone who is interested to join them -- including the LNP Alliance -- so complaints from those who are unwilling to do the work and incur the associated costs are unreasonable.<sup>10</sup>

The LNP Alliance -- by advocating a delay so that they can unilaterally propose last minute changes to the New MSA -- is attempting to bypass well-settled and successful industry mechanisms to implement changes to local number portability and the MSA with the LNPA. The public interest would best be served by promptly approving the New MSA and requiring the LNP Alliance to vet any suggestions it may have with the entire industry by working with the LNPA Working Group and the NANC to develop any desirable SOWs. Interestingly, unlike SOWs under the Old MSA, SOWs under the New MSA will be implemented at no cost to the industry.

The few parties who complain about a lack of transparency overlook the fact that the very information they seek, including details about transition dates and milestones, will only be confirmed once the New MSA is executed.<sup>11</sup> The New MSA of course permits adjustment to those details as needed to manage any risk associated with the transition, so prompt approval of the MSA is the best means for providing the transparency that the parties seeking delay are requesting. As soon as the MSA is approved and executed, the transition details will be set and

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<sup>9</sup> This practice applies equally to members of NTCA, making their complaint that "the LNPA transition thus far has been marked by limited transparency and little opportunity for meaningful input from small and rural carriers" ring hollow. See, e.g. Letter from Michael R. Romano and Brian J. Ford to Ms. Marlene H. Dortch, Telephone Number Portability, *et. al.*, CC Docket No. 95-116; WC Docket Nos. 09-109 and 07-149, at 2 (May 5, 2016).

<sup>10</sup> For the same reasons, the LNP Alliance's suggestion that the NAPM LLC excludes small carrier and consumer representatives is unwarranted. See, e.g., Letter from James C. Falvey, Counsel to the LNP Alliance, to Ms. Marlene Dortch, Telephone Number Portability, *et. al.*, CC Docket No. 95-116; WC Docket Nos. 09-109 and 07-149, at 2 (May 4, 2016). The NAPM LLC membership includes companies from a cross section of the industry, and all parties are welcome to join, whether individually or through a trade association, including one formed explicitly for participating in the NAPM LLC. Every Member has one vote, regardless of size or revenues, which discredits the claims that NAPM discriminates against smaller carriers. The Members also share the costs of undertaking the work of the managing the LNPA on behalf of the industry, which is a further benefit to all non-members who enjoy the benefits of local number portability in the United States.

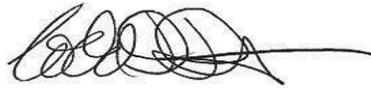
<sup>11</sup> See, e.g., Letter from Michael R. Romano and Brian J. Ford to Ms. Marlene H. Dortch, Telephone Number Portability, *et. al.*, CC Docket No. 95-116; WC Docket Nos. 09-109 and 07-149, at 3 (May 5, 2016).

the TOM can start educating the public about those details, discussing the details with the industry, and working with the NAPM LLC and iconectiv to make any adjustments necessary to ensure that the transition is successful. In short, prompt approval of the MSA will expedite the sharing of transition information with the entire industry.

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Once the New MSA is executed and NPAC Users begin reviewing the NPAC User Agreements and the MSA pursuant to the associated NDA using the same process that exists under the Old MSA the benefits will be clear. The New MSA can and will continue to be adjusted and improved throughout its term using the well-established and FCC-approved industry mechanisms. Approval of the New MSA now ensures that the entire industry, including small and mid-size carriers, will not incur unnecessary costs and transition delays. For these reasons, the NAPM LLC respectfully urges the Commission promptly to approve the New MSA.

Respectfully submitted,



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