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May 6, 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 4, 2016, Michael Calabrese, Director, Wireless Future Program with the Open Technology Institute at New America,¹ and the undersigned on behalf of the LNP Alliance² (together, the “Parties”), met with Amy Bender to urge the Commission to allow smaller carriers who are just now gaining access to portions of the iconectiv Master Service Agreement (“iconectiv MSA” or “MSA”) sufficient time to review the MSA, which they will soon be effectively required to sign.

The North American Portability Management LLC (“NAPM”), a consortium of billion-dollar-plus-revenue companies, has urged the Commission that “it is critical that the FCC approve the New MSA within days.”³ But in making this request, the NAPM carriers would deprive smaller carriers of their right to review the MSA before they are forced to sign it. It

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 (“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.

³ Letter from Todd D. Daubert to Marlene H. Dortch, Secretary, Federal Communications Commission, Telephone Number Portability, *et al.*, CC Docket No. 95-116; WC Docket Nos. 09-109 and 07-149, at 2 (May 2, 2016).

would also deprive the individual commissioners who must vote on the MSA input from smaller carriers, consumer advocates, and other stakeholders. The fact that the MSA was immediately placed on circulation for Commission approval has heightened the Parties' concern that this MSA, which contains terms and conditions that may be harmful to smaller carriers and consumers, could be authorized without any input from smaller carriers and consumer representatives. A wide variety of small carrier and consumer representatives have weighed in against premature Commission approval, including the Parties, NTCA, Public Knowledge, and additional small to mid-sized companies.

The MSA is now a confusing patchwork of public, confidential, highly confidential, and national security-related documents. The designations by NAPM are often inadequate. For example, the User Agreement that every company will soon have to sign is still marked "Confidential" and the pricing information is still marked "Highly Confidential," which means that the business representatives of the LNP Alliance members cannot review the pricing. The Parties believe that the User Agreement should be public and the pricing should be merely "Confidential" so that business representatives can review it.

An initial review of the MSA has also identified a wide variety of issues. To provide just one example, certain gating decisions about access to the Number Portability Administration Center ("NPAC") made by iconectiv that are adverse to providers are appealable to the NAPM,⁴ an organization comprised exclusively of large carriers.⁵ It does not seem that this is an appropriate role for the NAPM. If the NAPM is going to have an appellate role, it should first be reformed to have a more representative membership. Remarkably, if a provider is told that its request for access to the NPAC is not a Permitted Use, that appeal also goes to the NAPM. But if the NAPM merely fails to respond to that appeal with thirty (30) days, the same provider will automatically be given access to the NPAC through an Affirmative Permitted Use Finding, "and shall be binding on all parties and final and shall not be subject to further appeal or dispute."⁶ This provision, intended to protect providers, could provide access to the NPAC for a totally inappropriate party by default and is fundamentally flawed.

This is just one paragraph of the MSA and one example of the twenty or so issues identified by the Parties to date. The bottom line is that the Commission should slow down to review what the NAPM and iconectiv have drafted, and give smaller carriers and consumers an opportunity to do the same. The Parties would like to have sixty (60) days, or at least until June 15, so that they and the many others who have objected to this truncated process have sufficient time to review the implications of this agreement.

⁴ See MSA-Public Version, § 6.3.2.1.2.

⁵ The Federal Advisory Committee Act ("FACA"), 5 U.S.C. App. 2, requires that federal advisory committees reflect diverse in membership. It seems that the NAPM has been delegated by the Commission to perform certain advisory duties. Yet the dues structure of the NAPM does not and has not encouraged a diverse membership in that to our knowledge there are no carriers with less than \$1B in revenues on the NAPM.

⁶ MSA-Public Version, § 6.3.2.1.2.

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The MSA and the structures in place to approve it could have implications for small carrier pricing, but also for the IP Transition. The Parties remain concerned that the IP Transition is not being given sufficient priority and that the LNPA Transition is delaying it. Smaller carriers stand to gain much more in savings from a near-term IP Transition than from this one. Moreover, the future of the NPAC, a statutorily-mandated neutral routing and porting function, is being challenged in industry fora. The Commission should address these issues, surrounding the IP Transition and the future of the NPAC, sometime in the very near future. It may be that once the NPAC is finally reconstituted, it will be completely obsoleted by private companies seeking to turn a profit off of what is supposed to be a common, neutral, and nondiscriminatory function.

We appreciated the opportunity to provide these views to Commissioner O’Rielly’s office and hope all the Commissioners will agree with the Parties that there is a need for a closer review of the MSA in the coming months. 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
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