

May 9, 2016

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room TW-A325  
Washington, D.C. 20554

*Electronically Filed*

Re: *Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration*, WC Docket No. 07-149, WC Docket No. 09-109, CC Docket No. 95-116

Dear Ms. Dortch:

We write in response to the May 4, 2016, letter on behalf of Ericsson's wholly-owned subsidiary Telcordia Technologies, Inc. d/b/a iconectiv ("Ericsson"). Ericsson argues (at 2) that its communications regarding violations of the *Selection Order* are "completely irrelevant to the remaining issue in this proceeding," which it says is limited to "whether the Master Services Agreement is consistent with the" *Selection Order*.<sup>1</sup> Ericsson further argues that "whether Telcordia would use or discard previously developed code arose through contract negotiations" and is therefore "not subject to the *ex parte* rules."

The facts that have recently come to light raise troubling questions regarding Ericsson's representations to the Commission. In September 2014, in an effort to rebut concerns that Neustar had raised about the national security implications of allowing Ericsson to serve as the LNPA, Ericsson stated that "the 'U.S. NPAC will be built in America from the ground up,'" and that "it 'will not use foreign code in the U.S. NPAC nor will it use U.S.[-developed] code

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<sup>1</sup> Order, *Telcordia Technologies, Inc. Petition To Reform Amendment 57 and To Order a Competitive Bidding Process for Number Portability Administration, et al.*, 30 FCC Rcd 3082 (2015) ("*Selection Order*").

elsewhere in the world.’”<sup>2</sup> It further represented that “Telcordia employees working on NPAC/SMS systems will be U.S. citizens who will be closely screened, vetted, trained, and supervised.”<sup>3</sup> Ericsson now admits that – even before the March 2015 *Selection Order* was issued – it was knowingly employing non-U.S. citizens to work on the NPAC/SMS system. It is also now evident that Ericsson concealed this fact before the *Selection Order* issued and for months afterwards.

These facts raise substantial questions about Ericsson’s candor. Although it was using non-U.S. citizens to develop NPAC/SMS code *before* the *Selection Order*,<sup>4</sup> Ericsson does not explain why it was not until 6 months *after* the *Selection Order* – fall 2015 – that the Commission became aware “that national security may have been jeopardized,” nor does it explain how this came to light.<sup>5</sup> Nor does Ericsson explain why it waited until a year after the *Selection Order* – March 2016 – to begin what it claims is a project to have U.S. citizens rewrite the code.<sup>6</sup> These facts raise concerns that Ericsson apparently put national security at risk by using foreign coders to save costs on the contract – and hoped to get away with it.<sup>7</sup>

Ericsson has been less than forthcoming in its recent communications to the Commission about this very issue. In its April 25, 2016 *ex parte* letter, Ericsson informed the Commission that “the individuals hired during the time in question met all applicable obligations.”<sup>8</sup> That statement could be accurate only as it relates to “the time in question” in the *Stern* complaint: August–October 2015.<sup>9</sup> Ericsson conveniently omitted reference to its hiring of non-U.S. citizens sometime *before* the March 2015 *Selection Order*. Ericsson apparently hoped that the Commission would hurry up and approve its contract with the NAPM while at the same time trying to conceal the facts regarding its non-compliance from public scrutiny.

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<sup>2</sup> *Selection Order* ¶ 125 (quoting Supplemental *Ex Parte* Response of Telcordia Techs., Inc. D/B/A iconectiv to Neustar, Inc. Supplemental Reply at 5, 13 (filed Sept. 23, 2014)).

<sup>3</sup> *Id.*

<sup>4</sup> Letter at 1.

<sup>5</sup> Ellen Nakashima, *Security of Critical Phone Database Called into Question*, Wash. Post (Apr. 28, 2016), available at <http://wpo.st/HuvY1>.

<sup>6</sup> *See id.*

<sup>7</sup> *See* Compl. ¶¶ 30-41, *Stern v. Telcordia Techs./DBA iconectiv*, (N.J. Super. Ct. Mar. 28, 2016).

<sup>8</sup> Letter from John T. Nakahata, Counsel for Telcordia Techs., Inc. to Marlene H. Dortch, Sec’y, FCC, CC Docket No. 95-116, WC Docket Nos. 07-149, 09-109 (Apr. 25, 2016).

<sup>9</sup> *See* Compl. ¶¶ 28-30, *Stern v. Telcordia Techs./DBA iconectiv*.

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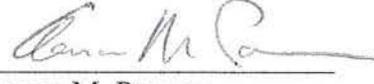
Communications regarding this issue implicate much more than the negotiation of the terms of the MSA. They implicate the accuracy of the representations that Ericsson made to the Commission. They also implicate Ericsson's compliance with the conditions that the *Selection Order* imposed independent of the terms of the MSA. Ericsson's failure to comply with its obligations under the *Selection Order* and its lack of candor are thus highly relevant to the remainder of this proceeding.

Communications regarding this issue are *not* exempt from the Commission's *ex parte* rules. Just because Ericsson's lack of compliance with the *Selection Order* "arose through contract negotiations" does not exempt these communications from the *ex parte* rules because compliance with a legal duty is outside the scope of any contract. Put simply, compliance with the *Selection Order* is not part of the give and take of contract negotiation. The legal duty exists *whether or not* it is incorporated in the MSA. More fundamentally, industry participants and members of the public have a right to know the circumstances around Ericsson's apparent violations and the basis for determining that it could nevertheless be permitted to serve as LNPA.

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, a copy of this letter is being filed via ECFS. If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

  
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