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May 13, 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 11, 2016, Michael Calabrese, director of the Wireless Future Program, New America's Open Technology Institute,¹ and the undersigned on behalf of the LNP Alliance² (together, the "Parties"), met with Rebekah Goodheart, Wireline Legal Advisor to Commissioner Mignon Clyburn to urge the Commission to allow smaller carriers and consumers a reasonable amount of time to review the portions of the iconectiv Master Service Agreement ("iconectiv MSA" or "MSA") that have only recently been made available.

The Parties remain very concerned that smaller carriers—including both competitive local exchange carriers ("CLECs") and rural local exchange carriers ("RLECs")—may not be given sufficient time to review the iconectiv MSA before it is approved by the Commission. Although there was a Confidential version of the MSA made available to outside attorneys and consultants in early April, the public version was only released a few weeks ago in late April. The public version was only released because the Parties as well as others complained that the Confidential version could not be reviewed by business executives of carriers that will soon be bound by its terms. In addition to the more than twenty (20) carriers represented by the LNP

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.

Alliance, NTCA, representing hundreds of RLECs, has filed in support of granting additional time for their smaller carrier members to review, comment on, and recommend changes to the iconectiv MSA before it is approved by the Commission. The larger NAPM carriers, all of which have over \$1B in annual revenues, have had over seven months to review the MSA. Accordingly, the Parties believe that allowing smaller carriers and consumers approximately 60 days, or until June 15, to review and comment on the MSA would be reasonable.

The Parties have been requesting sufficient time to review the MSA literally since before drafting began on the MSA. In Comments filed in July 2014, the LNP Alliance stated:

A draft Master Agreement is not included in the RFP for review. The Commission should ensure that the Master Agreement receives adequate scrutiny, including public comment, to ensure that it preserves the gains of the RFP process and provides adequate remedies for carriers harmed or discriminated against in the LNPA transition or under the new Agreement.³

It is clear that the fact that smaller carriers are just now seeing the MSA is entirely the result of the last-minute unveiling of the MSA by the NAPM and iconectiv. These carriers cannot be heard to blame smaller carriers for needing more time to review the MSA when the LNP Alliance specifically requested to review the MSA almost two years ago. It's safe to say that the Parties would certainly be a good bit further along in our review had we received it at that time. Although the largest carriers are pressing the Commission to deprive smaller carriers of any input into the MSA by granting Commission approval within days, it would not make sense to finally require the public filing of the MSA in late April and then immediately foreclose review to smaller carriers that are just now seeing it for the first time.

There is currently a flaw in the process whereby the review of the MSA and in fact the overall supervision of the LNPA Transition has been delegated to the NAPM, an organization comprised exclusively of the largest carriers.⁴ This flaw would be partially cured by providing sufficient time for a robust and comprehensive review of and comment on the iconectiv MSA, which will be serving as a roadmap for the LNPA Transition. Unlike virtually every other aspect of the Transition to date, the Commission-level scrutiny and vote on the MSA is one of the first transparent, open events where smaller carriers will actually have a chance to comment on the details of the Transition. In the webinars and face-to-face meetings with the Transition Oversight Manager to date, there has largely been one-way communication and when information is imparted, smaller carriers rarely are given the full picture. *See, e.g.*, Letter from the LNP Alliance, FISPA, Texaltel, OTI at New America, Public Knowledge, and Common Cause to Marlene H. Dortch, Secretary, FCC, Telephone Number Portability, et al., CC Docket

³ Comments of the LNP Alliance, Telephone Number Portability, *et al.*, CC Docket No. 95-116; WC Docket Nos. 09-109 and 07-149, at 25-26 (July 25, 2014).

⁴ The Federal Advisory Committee Act ("FACA"), 5 U.S.C. App. 2, requires that federal advisory committees reflect diversity in membership, a standard that the NAPM does not currently meet.

No. 95-116; WC Docket Nos. 09-109 and 07-149, at 1 (Oct. 29, 2016) (“It is critical to the Parties, some of whose members will be sharing in the costs of the TOM, that we have interactive and iterative input into the LOE, the TOEP, and the LNPA Transition, and not merely one-way, post hoc communication about decisions already taken by the largest, NAPM-member carriers.”)

To provide just one example, between January and April of this year, the TOM cut the intervals for testing and data migration during the LNPA Transition by more than half. *See* attached TOM January and April timelines. The LNP Alliance has been saying for years that there is potentially more risk than reward in this Transition if there is not adequate testing, which would likely lead to operational failures. *See, e.g.*, Comments of the LNP Alliance on the North American Number Portability Management LLC Transition Plan and the Draft Voting Trust Agreement, CC Docket No. 95-116; WC Docket Nos. 09-109 and 07-149, at 2 (May 21, 2015) (“The LNP Alliance also encourages the Bureau to stay fully engaged in this process to ensure that smaller carriers have input into the process at every stage, including input into testing processes, enforcement mechanisms, and the role of the Manager and LNPA Working Group. “)

Yet in releasing these drastically reduced testing and migration intervals, the TOM provided no explanation whatsoever as to why it was cutting these critical intervals in half. By all appearances, the TOM is getting caught up in the false deadlines of the largest NAPM carriers and is unduly compressing critical testing time frames to meet the unreasonable demands of the NAPM carriers. If in January longer testing and data migration intervals were deemed necessary, nothing has changed since then to cut those intervals in half.

NTCA, in a recent *ex parte* letter, attached hereto, has strongly supported taking the necessary time to allow smaller carriers to provide input into the MSA to ensure that the LNPA Transition is not forced forward in such a way that could lead to breakdowns and outages for smaller carriers:

Unfortunately, the NAPM has already gone on record urging a quick approval of the MSA, in fact threatening that the cost savings to NPAC users that may result from the LNPA Transition could be lost in part due to a delay. Yet, it is only through a transparent and inclusive process that allows for small carrier input — including time to review and comment on the MSA that it is possible to determine whether such purported cost savings will ever accrue to small carriers. . . . It may only be after critical issues are decided by the NAPM that carriers that are not members of NAPM will learn, for example, the testing procedures that will be used to ensure that the transition is indeed seamless, how the NPAC interface will function post-transition, and whether any cost savings actually materialize and accrue to small carrier NPAC users.⁵

⁵ Letter from Michael R. Romano, SVP – Policy, and Brian J. Ford, Regulatory Counsel, NTCA, to Marlene H. Dortch, Secretary, Federal Communications Commission, Telephone Number Portability, *et*

To date, there has been very little if any supervision of the NAPM carriers by the TOM or by the Commission to ensure that the Transition is conducted in such a manner that small carriers will not be subjected to unwieldy, expensive, or defective Transition procedures. When testing timelines are cut in half, this should be a cause for concern and aggressive inquiry.

The request of smaller carriers to be included as equal partners in the operational details of the LNPA Transition is not a new request. Smaller carriers have been emphasizing for years that the greatest costs for them of the LNPA Transition are likely to be the operational and resource challenges of actually implementing the Transition. In a letter sent directly to the NAPM two and a half years ago on November 1, 2013 by COMPTEL, HyperCube, CBeyond, and TDS Metrocom, attached hereto, these smaller carriers addressed these Transition cost concerns:

The additional costs that small carriers will bear include maintaining connections to multiple providers of LNPA, training already stretched staffs to manage LNP on two or more systems, and staying apprised of changes and updates to those systems. Such a result will unduly stretch smaller carriers' limited resources. Large carriers, particularly large incumbent carriers, may be able to absorb these additional costs; small carriers cannot easily do so.⁶

The concern of smaller carriers and of consumer advocates has always been that the greatest cost and risk would result from rushing the Transition and the disruption and operational failure that is likely to ensue if undue haste is permitted.

Again, from the COMPTEL/HyperCube/CBeyond/TDS Metrocom letter to NAPM:

If what were one-day ports slip to become one-week ports or one-month ports under a new LNPA, it will have a devastating impact on small carriers and our ability to compete for business. Again, large carriers are able to weather some rough patches in ways that smaller carriers cannot, so we want to bring this concern to the attention of the NAPM LLC so that the risk of consumer and business disruption can be assessed appropriately. Please ensure that the potential for disruption of a smooth functioning LNPA process, and the impact of such

al., CC Docket No. 95-116; WC Docket Nos. 09-109 and 07-149, at 2-3 (May 5, 2016) ("NTCA Letter").

⁶ Letter from COMPTEL, HyperCube, CBeyond, and TDS Metrocom, 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 (Nov. 1, 2013) (attached hereto).

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disruption on small carriers and their customers, is thoroughly considered and evaluated as you examine the various proposals.⁷

The LNP Alliance and OTI make the same request of the Commission today, to slow down, as NTCA says, “pause’ approval of the MSA,”⁸ and permit smaller carriers until June 15 to review the iconectiv MSA in order to avoid further complications down the line.

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
Sanford Williams
Marilyn Jones
Michelle Sclater
Amy Bender
Nick Degani
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⁷ *Id.* at 3.

⁸ NTCA Letter at 3.