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May 20, 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:

The LNP Alliance¹ provided their initial feedback on the Master Service Agreement (“iconectiv MSA” or “MSA”) in an ex parte filed on May 17, 2016. This ex parte provides further detail on one issue in particular, the manner in which the MSA restricts the use of the NPAC to telecommunication carriers offering “telecommunications services.”

In Section 6.1.2.2.4.1, the MSA provides:

In addition to the other restrictions on the use of User Data set forth in the User Agreement and the PTRS User Agreement, User Data shall not be used by any User or PTRS User other than for the purpose of routing, rating, or billing calls or performing network maintenance in connection with providing or facilitating the provision of telecommunications services.²

¹ 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.

² This Section 6.1.2.2.4.1 was inadvertently referenced as Confidential in a prior filing earlier this week. See Letter from James C. Falvey, Counsel for the LNP Alliance, 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 7 (May 17, 2016) (“May 17 Ex Parte”). There is also similar language

The Commission has previously determined, in the Direct Access to Number Resources Order, that interconnected VoIP providers can obtain direct access to number resources through the Number Portability Administration Center (“NPAC”).³ The Commission, by revising 47 C.F.R. § 52.5(j), has also determined that such interconnected VoIP providers’ service will be considered “telecommunications service” for the purposes of Part 52, Numbering.

The concept that a providers’ services could be considered “telecommunications service” solely for the purpose of Part 52 and not for other Parts and purposes was confusing and controversial. In fact, many thought the finding was contrary to statute and the National Association of Regulatory Utility Commissioners (“NARUC”) has appealed the Order, arguing, *inter alia*, that the Commission should have classified “interconnected VoIP” as a “telecommunications service” for all purposes and/or conducted a forbearance analysis if NPAC access were to be permitted.⁴

But NAPM and iconectiv appear to have gone much further than the Commission. The MSA finds that in gaining access to the NPAC and sharing User Data through the NPAC, an interconnected VoIP provider will be considered to be offering “telecommunications services” for routing, rating, and billing purposes, and also when it comes to network maintenance. MSA, § 6.1.2.2.4.1. What else is there? The MSA therefore seems to amount to a finding (by the NAPM carriers and iconectiv) that an interconnected VoIP provider that accesses the NPAC directly will be classified as a carrier of “telecommunications service” essentially for all purposes.⁵

The LNP Alliance is not taking a position in this ex parte on how interconnected VoIP providers should be classified. However, what we continue to be concerned about is that the NAPM and iconectiv have not issued a boilerplate 10-page User Agreement, but a 2,800-page MSA that is loaded with details that need to be very carefully and publicly reviewed and analyzed. We have also questioned why the NAPM as currently constituted is given so much authority to make decisions with important policy implications.⁶

If the Commission approves the MSA, it will be signing off on an agreement that effectively reclassifies any interconnected VoIP provider that gains direct access to the NPAC as a telecommunications carrier offering “telecommunications services,” not just

concerning the NPAC’s usage being limited to the rating, routing and billing of telecommunications services in several sections of the MSA. See MSA, initial “Whereas Clause” in the Recitals, §§ 6.1.2.2.3, 6.1.2.2.4.2, and 6.1.2.2.4.4.

³ *Numbering Policies for Modern Communications*, 30 FCC Rcd 6839 (2015).

⁴ *NARUC v. Federal Communications Commission*, Case No. 15-1497 (D.C. Cir.).

⁵ The MSA does not reference 47 C.F.R. §52.5(j) or any other definition of “telecommunications service” when it uses that term so the MSA creates further ambiguity in that regard.

⁶ See May 17 Ex Parte at 4-5.

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for the purposes of Part 52, Numbering, but for essentially all purposes, including billing, rating, routing, and network maintenance. This begs the question as to why interconnected VoIP providers that have not accessed the NPAC but offer similar services to those interconnected VoIP providers that have accessed it would not also be considered telecommunications carriers offering “telecommunications services.” But more importantly for the purposes of this *ex parte*, these provisions in the MSA call for broader input into the MSA and for a detailed analysis by the Commission of the MSA on all issues, and not just the narrow issues of neutrality and compliance with the Commission’s Selection Order.

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

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