



HARRIS, WILTSHIRE
& GRANNIS LLP

May 24, 2016

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Telephone Number Portability, et al., CC Docket No. 95-116, WC Docket Nos. 09-109 & 07-149*

Dear Ms. Dortch:

On May 23, 2016, an ex parte letter was filed by Telcordia Technologies, Inc. dba iconectiv in the above matters. The filing inadvertently included an incomplete list of Commission staff who were copied on the letter. The corrected version is attached and replaces, in its entirety, the version that was filed previously.

Please contact me if you have any questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'John T. Nakahata'.

John T. Nakahata
Mark D. Davis

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Ms. Marlene Dortch
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Telephone Number Portability, et al.*, CC Docket No. 95-116, WC Docket Nos. 09-109 & 07-149

I write to respond to the May 17 letter of the LNP Alliance and the Wireless Future Program¹ (collectively, “the Alliance”), which contains the Alliance’s critique of the Master Services Agreement (“MSA”) negotiated between the NAPM LLC and Telcordia Technologies, Inc. dba iconectiv (“Telcordia”). The letter does not raise any justification for disapproving the MSA. In its March 2015 *Selection Order*, the Commission made clear that the purpose of reviewing the MSA was to determine whether it complies with the neutrality and security requirements of the *Selection Order*.² The LNP Alliance fails to raise any substantial concerns with either. Nor could it: on both neutrality and security, the MSA fully complies with the terms of the *Selection Order*—and its provisions on neutrality and security are significantly more stringent than the existing MSA between NAPM and the incumbent. In short, the MSA negotiated between Telcordia and NAPM is stronger and more protective in all respects—on neutrality, security, price, and performance—than the current agreement with Neustar.

The Alliance raises a laundry list of critiques, questions, and comments, which take issue with everything from the price of the contract³ (which was established by Telcordia’s bid and

¹ Although the Wireless Future Program at New America’s Open Technology Institute purports to be acting as “a non-profit policy institute,” it bears emphasis that Michael Calabrese—the director of the Wireless Future Program—previously submitted a report in this proceeding that was funded by Neustar, raising serious questions about the Program’s independence. See J. Armand Musey and Michael Calabrese, *A Public Interest Perspective on Local Number Portability: Consumers, Competition and Other Risks*, attached to Letter from Michael Calabrese to Marlene Dortch, WC Docket Nos. 07-149 & 09-109, CC Docket No. 95-116, GN Docket No. 13-5 (filed Mar. 9, 2015).

² *Telephone Number Portability, et al.*, Order, FCC 15-35, 30 FCC Rcd. 3082, 3164 ¶ 193 (2015) (“*Selection Order*”) (“Once contract terms are reached, and a Code of Conduct is finalized, the NAPM shall submit the contract and Code of Conduct to the Commission for review and approval. We condition our selection of Telcordia as the LNPA on the satisfactory negotiation of contract terms that are consistent with the Commission’s requirements regarding neutrality and security matters.”); *id.* 3083 ¶ 3 (noting that “the Commission will review [the contract] for consistency with this Order”).

³ See Summary of Issues with the iconectiv Master Services Agreement Identified by the LNP Alliance as of May 17, 2016 at 2 § 5.2.4, attached to Letter from James C. Falvey to Marlene

was vastly more competitive than the price bid by the incumbent) to the boilerplate over governing law.⁴ Ironically, the Alliance complains that Telcordia's price decreases over time—which was contemplated by the RFP⁵—while the incumbent during its tenure has negotiated three no-bid extensions that ultimately resulted in significant cost increases for the industry. At the same time, many of the Alliance's complaints are about provisions or practices that were carried over from the Neustar agreement⁶ (but with much lower prices across the board) or are more favorable than the Neustar contract,⁷ meaning that further delay will only result in Neustar continuing to overcharge the providers—both large and small. In any event, the critiques have nothing to do with whether the MSA complies with the *Selection Order* and are therefore beyond the scope of this proceeding. The Commission should disregard them for this reason.⁸

Dortch, WC Docket Nos. 07-149 & 09-109, CC Docket No. 95-116 (filed May 17, 2016) (“LNPA Letter”).

⁴ *Id.* at 7 §14.6.

⁵ See North American Portability Management LLC, 2015 LNPA RFP § 13.4, https://www.napmlc.org/Docs/npac/ref_docs/2015%20LNPA%20RFP%202%204%2013.docx.

⁶ For example, the Alliance takes issue with numerous provisions in Article 6, which are essentially identical to Neustar's current contract. Compare Telcordia MSA §§ 6.1.2.2.2, 6.1.2.2.4.1, 6.1.2.2.4.4, 6.1.2.2.4.4, 6.1.2.2.4.5, 6.2.5.6, 6.3.2.1.2 with Neustar, *Amendment 62 Under Contractor Services Agreement for NPAC/SMS* at 12, 13-14, 16, 17, 27, 52, <http://www.sec.gov/Archives/edgar/data/1265888/000095013308003729/w71456exv10w1w2.htm>. The Alliance also complains that the user agreement is not disclosed publically, but this is the same as the status *quo*: Neustar discloses its user agreement subject to an NDA and only after a user's application is approved. NEW USER REGISTRATION, <https://www.npac.com/the-npac/access/service-providers/new-user-registration> (last visited May 20, 2016). Similarly, although the Alliance complains that the user agreement incorporates the MSA by reference, Neustar's user agreement does so as well. And contrary to the Alliance's assertions, Telcordia will not incorporate by reference a redacted version of the MSA. Users will have access to the full version of the MSA with their user agreement—subject only to redactions for security.

⁷ For example, the Alliance criticizes Section 6.1.2.2.4.4, which permits users a one-year grace period for sharing derivative data with non-users, as was permitted under Amendment 62 to Neustar's MSA. See Amendment 62 at 16 § 4.2(b)(2)(D)(iv)(II). The Alliance's complaint is not with Telcordia's MSA, which eliminates this practice, but with Neustar's MSA. The one-year grace period was included to allow for a transition period for those providing and receiving derivative data before the more stringent requirement took effect.

⁸ The Alliance halfheartedly suggests in Footnote 4 that the Commission should expand the scope of its review because the NAPM, rather than “small carriers and consumers,” negotiated the MSA. This is simply an untimely request for reconsideration of the *Selection Order*, which directed the NAPM to negotiate the contract.

On neutrality—the only issue that is even vaguely connected to the requirements of the *Selection Order*—the Alliance largely attempts to reargue issues that were considered and resolved in the *Selection Order*. These arguments amount to an untimely request for reconsideration, which the Commission should reject.⁹ The Alliance first complains that the MSA permits Telcordia 270 days from signing to implement the relevant neutrality provisions, to permit Telcordia to take steps such as closing out its employee stock purchase plan for covered employees and ensuring that they do not hold any Ericsson stock. But this is even more stringent than what was contemplated by the *Selection Order*, which required Telcordia to implement its various neutrality provisions “prior to Telcordia commencing to provide LNPA services pursuant to a contract with the NAPM.”¹⁰ Nor does this leave any gaps. The contract specifically requires Telcordia to be neutral before carrier testing begins (*see* § 3.2.2.1.2.1), and before that time, Telcordia is subject to confidentiality and use restrictions under the MSA and (prior to the execution of the MSA) under nondisclosure agreements. There is no “hole” to close with respect to misuse of user data.

Similarly, the Alliance “respectfully disagree[s]” with Footnote 644 of the *Selection Order*, which permits Telcordia employees who have previously participated in a defined-benefit Ericsson pension plan to continue doing so. But once again, the time for seeking reconsideration of this decision has passed. In any event, the challenge is meritless: contrary to the Alliance’s claims, these employees are not “Ericsson” employees. And the Alliance cannot articulate *any* way in which participation in a defined-benefit pension plan would cause these employees to act non-neutrally. A participant receives his pension regardless of Ericsson’s performance. The objection is meritless.

The Alliance also challenges a provision in Telcordia’s Code of Conduct, which prohibits an employee, officer, or director of Telcordia from owning more than a 1% interest in a telecommunications services provider (“TSP”).¹¹ As Telcordia explained already,¹² this provision is significantly more stringent than the rule applied by Neustar, whose MSA permits these individuals to hold up to a 5% interest in a TSP. The Alliance has not suggested that this provision compromised Neustar’s neutrality in anyway. Nor could it: porting is a highly automated process. The Alliance suggests that Telcordia should be subject to a more demanding standard than Neustar because Telcordia is owned by Ericsson, but this is completely irrelevant because this provision applies at the individual—not the corporate—level.

The Alliance’s comments regarding the IP transition were similarly rejected in the *Selection Order*. It argues that the Commission should require the parties to include more specificity about how the NPAC will handle the IP transition¹³—a point it could have (but did

⁹ 47 C.F.R. § 1.106.

¹⁰ *Selection Order*, 30 FCC Rcd. at 3162 ¶ 188.

¹¹ *See* LNPA Letter at 6.

¹² Letter from John Nakahata, Counsel for Telcordia Technologies, Inc., to Marlene Dortch, Secretary, FCC, at 2, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (filed May 4, 2016).

¹³ LNPA Letter at 2.

not) raise in during the comment period for the RFP. This is the same argument that the Alliance made in July 2014 and that the Commission rejected in the *Selection Order*.¹⁴ And for good reason: these issues are a matter of ongoing discussion within the industry and at the FCC and the LNPA must administer whatever decisions are made with respect to these issues.

The LNP Alliance's critique of the NAPM's role in the MSA is similarly misplaced. The Alliance first complains that the NAPM plays too large a role in managing the LNP contract, but the *Selection Order* specifically addressed this, noting that the Commission will revisit the question of who should manage the LNPA contract after the contract is executed and that "[u]ntil that question is decided, we will continue to rely on the NAPM."¹⁵ The Alliance's complaints about the NAPM's dues structures are likewise a side issue completely separate from the issue here: whether the MSA complies with the *Selection Order*. Nor does this dues structure violate the Federal Advisory Committee Act: the NAPM is not acting as an advisory committee but is the party seeking the Commission's approval of a proposed contract.

Finally, the LNP Alliance critiques the intervals for testing and data migration, complaining that "the TOM provided no public explanation" for changes that have been made to these intervals.¹⁶ But this is not a valid critique of the MSA, as the parties have ensured that the MSA contains appropriate provisions for Acceptance Testing of the entire system, including all interfaces that would be used by small carriers as well as Service Bureaus who are likely to test on behalf of small carriers. In any event, if the industry later determines that a longer period is necessary for testing, the MSA provides mechanisms for elongating transition milestones.

* * *

The Alliance has stylized its critique of the MSA as an "initial" critique and has previously asked the Commission to delay awarding the contract to allow parties additional time to submit comments. The Commission should not accede these efforts to create needless delay. It does not take months to determine whether the MSA meets the discrete requirements of the *Selection Order*, and both Neustar and the Alliance have had more than adequate time to do so. Moreover, they have no statutory right to comment on the approval of a contract between Telcordia and NAPM in the first place. Neustar has argued that it—as a third party—has a right to review and comment on the contract, citing *Independent U.S. Tanker Owners Committee*

¹⁴ The Alliance had similarly complained that "the RFP does not specify how numbering resources and roles will be restructured to support post-IP Transition requirements" and asked the Commission to delay award of the contract so that the Commission could "establish clear post-IP transition requirements for the NPAC." *Selection Order*, 30 FCC Rcd. at 3163 ¶¶ 191-92. The Commission responded that "[e]ither the incumbent provider or the new LNPA will need to adapt and respond to technological and marketplace changes. . . . [W]e decline to adopt the suggestion that the LNPA contract be re-bid because of pending IP transition issues." *Id.* ¶ 192.

¹⁵ *Selection Order*, 30 FCC Rcd. at 3165 ¶ 196.

¹⁶ LNPA Letter at 4.

(*ITOC*) v. *Lewis*.¹⁷ But the D.C. Circuit has subsequently clarified that “*ITOC* did not purport to establish that participation by interested nonparties is required in all informal adjudicatory proceedings.”¹⁸ On the contrary, where (as here) there is no regulation conferring a right to comment, *ITOC* has no application.¹⁹ In short, the Commission has already given Neustar, the Alliance, and other interested parties *more* than required process. The Commission should expeditiously approve the MSA.

Respectfully submitted,



John T. Nakahata
Mark D. Davis

cc: Diane Cornell
Kris Monteith
Ann Stevens
Sanford Williams
Marilyn Jones
Michelle Sclater
Amy Bender
Nick Degani
Rebekah Goodheart
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Neil Dellar
Michele Ellison
Terry Cavanaugh
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¹⁷ 690 F.2d 908, 922 (D.C. Cir. 1982) (“The distinct and steady trend of the courts has been to demand in informal adjudications procedures similar to those already required in informal rulemaking.”).

¹⁸ *Manhattan Tankers, Inc. v. Dole*, 787 F.2d 667, 671 (D.C. Cir. 1986).

¹⁹ *Id.* (“In *ITOC*, the agency charged with administering the statute at issue there had promulgated a rule granting current participants in the coastwise trade an opportunity to comment on applications to enter that market. In holding that domestic shippers should have been allowed opportunity for notice and comment, the *ITOC* court was thus affirming the well-established principle that agencies must abide by their own rules. That principle has no application here for the straightforward reason that the pertinent regulations, as we have just seen, do not provide for participation by other shipowners.”).