



1717 Pennsylvania Avenue, N.W.
12th Floor
Washington, D.C. 20006

Tel 202 659 6600
Fax 202 659-6699
www.eckertseamans.com

James C. Falvey
jfalvey@eckertseamans.com
Phone: 202 659-6655

May 27, 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 25, 2016, Michael Calabrese, director of the Wireless Future Program at New America's Open Technology Institute,¹ and the undersigned on behalf of the LNP Alliance² (together, the "Parties"), met with Travis Litman, Senior Legal Advisor to Commissioner Jessica Rosenworcel, to urge the Commission to review our serious concerns with the LNPA Transition and with the iconectiv Master Service Agreement ("iconectiv MSA" or "MSA").

The LNPA Transition has not been sufficiently transparent to date, causing smaller carriers excluded from the process to lose confidence that their interests and those of consumers will be protected during the Transition. A number of developments have reinforced this impression, including the fact it only recently came to light that foreign nationals were involved in writing code for the Number Portability Administration Center ("NPAC") and the database coding had to be restarted in March 2016. Recently, it became clear that testing and data migration intervals were cut in half by the Transition Oversight Manager ("TOM") between January 2016 and April 2016, without any detailed explanation. And the MSA itself, drafted by the NAPM and iconectiv behind closed doors, requires revisions beyond, as some have recommended, a limited review of neutrality and security issues. For example, the draft MSA

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 small and medium-sized provider members and other similarly situated providers.

claims that the NPAC can only be used in connection with “telecommunications services,”³ yet Commission policy has been to permit direct access to numbering resources for interconnected VoIP providers, which have not been classified as providers of “telecommunications services.”

In short, the lack of transparency has produced poor outcomes, as one would expect, and the Parties therefore urge the Commission to take a step back at this stage of the LNPA Transition to make it a more transparent, public, and effective process. The simplest place to start in terms of increased transparency is to require that additional portions of the MSA be made public. For example, the User Agreements in Exhibit J, which incorporate the entire MSA by reference, are agreements that every provider will be required to sign on to in order to gain access to the NPAC. There are many provisions in the User Agreements that the Parties have objected to in previous filings,⁴ yet these and other provisions of the MSA are somehow unilaterally designated as “Confidential.” “Confidential” documents cannot be reviewed by the business representatives who will soon be required to sign the User Agreements. Some have argued that non-NAPM carriers can review them after the MSA is approved,⁵ knowing that it will be impossible to make revisions to the Agreements at that time. The Commission should scrutinize these designations and, at a minimum, make Exhibit J User Agreements public.

The next necessary step in increasing transparency is to ensure that the North American Portability Management, LLC (“NAPM”) an organization that is fully representative of the industry and consumers. The NAPM has established a dues structure that has resulted in only large carriers joining the organization, with no members with under \$1B in annual revenues. The Commission should condition its approval of the MSA on NAPM adopting a revised dues structure, in consultation with smaller carrier, consumer, and state representatives, that would ensure broader participation, including both consumer and state representatives on the NAPM.

The Parties have said for some time that the NAPM and iconectiv have made no effort to incorporate the ongoing IP Transition into the LNPA Transition and that there was a serious risk that the LNPA Transition could delay the IP Transition. For smaller, IP-based carriers, the savings from the LNPA Transition are likely to be minimal, but the savings from completing the IP Transition will be orders of magnitude larger. The suspicion that the IP Transition will be delayed has been reinforced by the fact that iconectiv and the TOM have made no effort to coordinate with the industry fora implementing the IP Transition and have made no allowance in their timelines for IP Transition database requirements. The Parties’ concern that larger carriers may be trying to delay the IP Transition was reinforced by CenturyLink’s recent filing

³ See, e.g., MSA, §§ 6.1.2.2.4.1, 6.1.2.2.4.2.

⁴ See Letter from James C. Falvey, Counsel to 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, Summary of Issues with the iconectiv Master Services Agreement Identified by the LNP Alliance as of May 17, 2016 (May 17, 2016) (“May 17 Summary of Issues”).

⁵ See Letter from Todd D. Daubert, Counsel to the NAPM LLC, 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 4 (May 6, 2016).

that claimed that the LNPA Transition “must be completed before modifications to numbering databases and systems can be considered in connection with the IP Transition.”⁶ The Commission should not permit larger carriers to hold the IP Transition hostage as an excuse to unduly and recklessly expedite—through shortened testing and migration intervals—the LNPA Transition.

There is every reason for the Commission to scrutinize both the LNPA and IP Transitions because the future of a neutral, independent, and nondiscriminatory NPAC is very much at risk, depending on how these transitions unfold. Alternative routing methodologies have already begun to proliferate across the industry. In industry fora discussing the future of IP-based routing, there were no less than fifteen (15) different proposals for how the exchange of IP routing information in support of IP calls could be exchanged between carriers. Importantly, however, there has been no consensus as to a *preferred* method for IP routing information exchange. In the absence of an FCC rulemaking proceeding that would mandate such an exchange of the required routing information through the NPAC database, there is nothing to prevent large carriers from sharing such required routing information only with their preferred carrier partners, available only to those carriers with whom they deign to negotiate interconnection agreements. In such a scenario, smaller carriers may be relegated to only TDM interconnection, while larger and preferred carriers negotiate private deals using external registries for the exchange of the required routing information.

Today, the default routing methodology is to convert IP to TDM transmission and rely on traditional 10-digit routing. In an all-IP world, that default may not be available and smaller carriers in particular would be harmed by incomplete routing and call failure. The current issues with rural call completion could prove to be a precursor of much more endemic call completion issues, absent forward-looking default routing methodologies. While two large carriers may agree on their own routing protocols, this is not a case where widespread innovation and differentiation is beneficial. Calls must be routed seamlessly between all carriers and not only between the largest carriers. Industry-wide conformity through default routing methodologies is necessary to ensure consistent and nondiscriminatory call routing across the industry for small and large carriers alike.

The Parties continue to be concerned that, particularly if there is not an open and transparent process, the future of an independent and neutral NPAC could be in jeopardy. In the past, iconectiv has actively advocated, for example, in its May 2014 White Paper⁷ for private ENUM registries that could impose additional and potentially discriminatory costs on smaller carriers and their customers. And in recent industry fora, the future of the NPAC has been called into question. Section 251(e)(1) of the Communications Act requires the Commission to

⁶ Letter from Jeffrey S. Lanning, Vice President, Federal Regulatory Affairs, CenturyLink, 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 20, 2016).

⁷ *IP Inter-Carrier Routing, Capabilities to Support IP Services Interconnection*, Telcordia (dba iconectiv) (May 2014).

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designate impartial entities to administer telecommunications numbering,⁸ and the Commission's rules reflect that statutory mandate.⁹ The Commission must be vigilant to ensure that the NPAC is not gradually replaced by private ENUM registries. Permitting the LNPA to build a new NPAC database that does not incorporate IP routing increases the likelihood that private, non-neutral mechanisms will be developed faster than an IP-capable NPAC and supplant it altogether. The best way to ensure that the LNPA Transition fully incorporates the IP Transition is to hold public, transparent workshops to guarantee that the NPAC is developed as an IP-capable database that will support the IP Transition.

In closing, the Commission should carefully review the MSA recommendations previously made by the Parties¹⁰ and continue to independently review the 2,800-page iconectiv MSA to ensure that it is suitable for small carriers and consumers alike. The issues previously raised by the Parties need to be addressed in the final MSA and rushing the agreement and the LNPA Transition process forward without adequate testing intervals will only lead to process failure. In addition, the Parties respectfully urge the Commission to adopt the broader recommendations herein in order to safeguard a successful LNPA Transition.

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
Rebekah Goodheart
Travis Litman
Neil Dellar
Michael Calabrese
Dave J. Malfara, Sr.

⁸ 47 U.S.C. § 251(e)(1).

⁹ 47 C.F.R. § 52.26(a) (prohibiting the LNPA from affiliation with a telecom equipment manufacturer); 47 C.F.R. § 52.12(a)(1) (prohibiting the LNPA from being aligned with a particular industry segment); 47 C.F.R. § 52.12(a)(1) (the LNPA must be impartial); 47 C.F.R. § 52.21(k) (the LNPA must be independent); 47 C.F.R. § 52.21(a)(1)(iii) (the LNPA must not be subject to undue influence).

¹⁰ See, e.g., Letter from James C. Falvey, Counsel to 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, May 17 Summary of Issues (May 17, 2016).