Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matters of	
Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration	WC Docket No. 07-149
Petition of Telcordia Technologies, Inc. to Reform or Strike Amendment 70, to Institute Competitive Bidding for Number Portability Administration, and to End the NAPM LLC's Interim Role in Number Portability Administration Contract Management	WC Docket No. 09-109
Telephone Number Portability	CC Docket No. 95-116

MOTION OF NEUSTAR, INC. TO ORDER TELCORDIA TECHNOLOGIES, INC. TO SHOW CAUSE WHY IT SHOULD NOT BE DISQUALIFIED FROM SELECTION AS LOCAL NUMBER PORTABILITY ADMINISTRATOR

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INTRODUCTION

Ericsson's wholly owned subsidiary, Telcordia Technologies, Inc. d/b/a iconectiv ("Ericsson") represented to the Commission that, to address various concerns about potential vulnerability of a Number Portability Administration Center ("NPAC") run by a foreign-owned entity, Ericsson would develop a new U.S. NPAC from scratch, employing only U.S. citizens for that purpose. The Commission expressly relied on that representation when it selected Ericsson to serve as the Local Number Portability Administrator ("LNPA"). In recent weeks, however, the Commission has revealed that Ericsson employed foreign nationals in the development of the software code for the NPAC.

The facts that have been publicly revealed give rise to a reasonable inference that Ericsson may have misled the Commission in order to improve its prospects of winning the selection process. If it did, it must be disqualified from serving as the LNPA. As precedent from both the government contracting context and the Commission's own licensing decisions makes clear, when a bidder makes a material misrepresentation concerning its qualifications, the bidder undermines the integrity of the government's process and must be disqualified. And that conclusion is especially clear in this context, where the apparent misrepresentations related to a matter that was not only crucial to the Commission's selection decision, but also relates to the security of a critical element of the nation's telecommunications infrastructure.

There may be an explanation for how Ericsson came to discover that it had not only misstated important facts concerning its own operations but had also violated express requirements set forth in the *Selection Order*. But if there is such an explanation, Ericsson has not provided it. The circumstances surrounding Ericsson's conduct must be made a part of the record of this proceeding, and, if the Commission determines that Ericsson has made a material misrepresentation, Ericsson should be disqualified from serving as the LNPA.

BACKGROUND

1. "Secure and reliable operation of the NPAC is vital to the functioning of the Nation's critical communications infrastructure, public safety, and the national security."[1] The LNPA is responsible for ensuring the seamless porting of numbers – which ensures that wireline calls, wireless calls, and text messages are routed to their proper recipients[2] – a function that "has become an integral part of our lives."[3] The LNPA also "maintains additional systems and services based on information it has about the assignment of numbers: the Interactive Voice Response (IVR) System, the Enhanced Law Enforcement Platform (ELEP) Service, and the Intermodal Ported Telephone Number Identification Service."[4] Law enforcement and public safety agencies rely on ELEP and IVR to identify the facilities-based provider serving ported and pooled numbers.[5]

Because of the NPAC's central importance to the nation's telecommunications infrastructure and law enforcement, it is essential that the NPAC be secure against potential cybersecurity threats.[6] Neustar has a two-decades-long security track record, and has developed positive and productive relationships with law enforcement and public safety agencies, ensuring

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[1] Order, *Telcordia Techs., Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration*, 30 FCC Rcd 3082, ¶ 82 (2015) ("*Selection Order*").

[2] *See id.* ¶ 101.

[3] *Id.* ¶ 4.

[4] *Id.* (footnotes omitted).

[5] *See id.*; *see also* Reply Comments of the FBI *et al.*, CC Dkt. No. 95-116, WC Dkt. No. 09-109, at 2-3 (Aug. 11, 2014) ("Federal Law Enforcement Reply Comments") (noting that law enforcement agencies rely on the data from the NPAC to serve process on carriers for individuals believed to be engaged in criminal activity or matters involving national security, and to track suspects' service use during investigations).

[6] *See* Federal Law Enforcement Reply Comments at 5-6.

that the NPAC fulfills its functions in these areas without a hitch. Commenters accordingly raised questions during the selection process as to whether a switch to a new NPAC vendor might jeopardize the security and reliability of the NPAC.[7] One aspect of those concerns arose from the fact that Ericsson is a foreign corporation that has provided local number portability services in other nations, including Egypt, Pakistan, Saudi Arabia, Nigeria, and India, among others. Deployment of an NPAC based on number portability systems in use in foreign nations could expose the NPAC to cybersecurity risks. In addition, the RFP documents – which were prepared before the release of the NIST Cybersecurity Framework – failed to spell out adequate security requirements.

Ericsson apparently recognized that cybersecurity concerns threatened to sink its proposal to serve as the LNPA. It accordingly addressed cybersecurity concerns by emphasizing that its NPAC would be walled off from foreign cybersecurity threats by promising that 1) "the U.S. NPAC will be built in America from the ground up"; 2) Ericsson "will not use foreign code in the U.S. NPAC nor will it use U.S.-developed code elsewhere in the world"; and 3) only "U.S. citizens who will be closely screened, vetted, trained, and supervised" will work on the NPAC system.[8]

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[7] *See, e.g.*, *id.*; Letter from Lawrence Byrne, Deputy Comm'r, N.Y.C. Police Dep't, to Marlene H. Dortch, Sec'y, FCC, CC Dkt. No. 95-116, WC Dkt. No. 09-109 (Oct. 9, 2014); Comments of Telecommunications Sys. Inc., WC Dkt. No. 09-109, CC Dkt. No. 95-116, at 3 (Aug. 22, 2014); Joint Reply Comments of the International Ass'n of Chiefs of Police & National Sheriffs' Ass'n, CC Dkt. No. 95-116, WC Dkt. No. 09-109, at 2 (Aug. 20, 2014); Comments of Public Util. Div. of the Okla. Corp. Comm'n, WC Dkt. No. 09-109, CC Dkt. No. 95-116, at 3 (Aug. 8, 2014); Comments of Cequel d/b/a/ Suddenlink, WC Dkt. No. 09-109, CC Dkt. No. 95-116, at 6-7 (July 25, 2014); Comments of U.S. TelePacific Corp. and HyperCube Telecom, LLC, WC Dkt. No. 09-109, CC Dkt. No. 95-116, at 5-7 (July 25, 2014); Comments of Intrado, Inc., WC Dkt. No. 09-109, CC Dkt. No. 95-116, at 2-4 (July 24, 2014).

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

In the *Selection Order*, based on those representations, the Commission determined that Ericsson had adequately addressed cybersecurity concerns. The Commission noted in particular "the steps that Telcordia takes to segregate its offerings pertaining to critical infrastructure from its other services" and that "the same security commitments that Telcordia makes, it indicates, will apply to any subcontracted and supported elements of LNP service."[9]

2. On April 28, 2016, it was publicly revealed that "[f]ederal officials fear that national security may have been jeopardized" because Ericsson "violated a federal requirement that only U.S. citizens work on the project."[10] According to press reports, Ericsson "is being compelled to rewrite the database computer code . . . to assuage concerns from officials at the FBI and Federal Communications Commission that foreign citizens had access to the project" and that "if other countries gain access to the code, they could reap a counterintelligence bonanza."[11] The FCC confirmed that "Telcordia performed preliminary work that was inconsistent with the Commission's Order."[12]

Although the Commission has confirmed the need to mitigate the security breaches in Ericsson's work on the NPAC code, there has been no explanation either from Ericsson or from

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[9] *Id.* ¶ 126.

[10] *See* Ellen Nakashima, *Security of Critical Phone Database Called into Question*, Wash. Post (Apr. 28, 2016), http://wpo.st/HuvY1.

[11] *Id.*

[12] David Kaut, *Telcordia Recoding LNPA System; FCC Says Initial Work Inconsistent with 2015 Order*, Communications Daily, 2016 WLNR 13613719 (May 2, 2016). The revelations concerning the violations of the *Selection Order* were sparked by the filing in the record of a whistle-blower complaint accusing Ericsson of additional violations of CFIUS, allegations that Ericsson (in carefully phrased language) has denied. *See id.* (Ericsson spokesperson's statement that denials "remain[] accurate"); *see also* Letter from Theresa Z. Cavanaugh, Office of Gen. Counsel, Admin. Law Div., FCC, to Marlene H. Dortch, Sec'y, FCC, WC Dkt. Nos. 09-109 and 07-149, CC Dkt. No. 95-116 (Apr. 25, 2016) (attaching Complaint, *Stern v. Telcordia Techs., et al.*, Dkt. No. MID-L-01929-16 (N.J. Super. Ct. Law Div. filed Mar. 28, 2016)).

the Commission concerning the circumstances surrounding the breach, and how Ericsson came to be employing foreign nationals on the development of the NPAC – contrary to its representations to the Commission, and in violation of the requirements the Commission put in place.[13]

DISCUSSION

I. THE COMMISSION SHOULD COMPEL ERICSSON TO PROVIDE ALL THE FACTS CONCERNING ITS SECURITY BREACHES ON THE RECORD

The Commission must resolve, on the record, the question whether Ericsson made material misrepresentations during the selection process with regard to cybersecurity of the NPAC it planned to develop and deploy. Given the public interest at stake – and Neustar's own interest in fair and lawful competition in the selection process – this matter cannot be swept under the rug, or resolved through a secret backroom deal.[14] The Commission has relied upon Ericsson's "credible assurances" that it would comply with its legal obligations.[15] The best and most appropriate way for the Commission to shine a disinfecting light on events to date is to issue an order for Ericsson to show cause why it should not be disqualified from serving as the

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[13] Ericsson stated in a letter to the Commission that it began to develop the NPAC software before "security-related requirements had been finalized," and that it always intended that "there would be a need for post-selection mitigation and collaboration regarding security terms." Letter from John T. Nakahata, Counsel for Ericsson, to Marlene H. Dortch, Sec'y, FCC, CC Dkt. No. 95-116, WC Dkt. Nos. 07-149 & 09-109 (May 4, 2016). This raises more questions than it answers – if anything, it provides additional reasons for concern that Ericsson misled the Commission by promising to do something that it knew it was not doing, and that it only intended to do so if it could not get away with that non-compliance.

[14] *See, e.g.*, *David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253, 1260 (D.C. Cir. 1991) (remanding where FCC "ignor[ed] important arguments and evidence" related to misrepresentations); *California Pub. Broad. Forum v. FCC*, 752 F.2d 670, 680 (D.C. Cir. 1985) (holding that the FCC acted arbitrarily and capriciously by ignoring "a vigorous factual dispute regarding the issue of misrepresentation").

[15] *Selection Order* ¶ 181.

LNPA. Such an order will require Ericsson to explain the commitments that it made, how it complied or failed to comply with them, and how the Commission could have been so badly misled with regard to Ericsson's actions.

The facts that have come to light to date demonstrate that Ericsson deliberately led the Commission to conclude that Ericsson had committed to use only U.S. citizens to develop the NPAC software.[16] As noted, this was a matter of critical importance both to the security of the NPAC, and to the viability of Ericsson's proposal. Yet Ericsson has apparently admitted that, at the time the Commission reached that understanding, Ericsson was already employing *non-U.S.* citizens to develop the NPAC. It is hard to avoid the inference that, whether through affirmative misrepresentations, material omissions, or disingenuous statements, Ericsson deliberately misled the Commission.

If Ericsson misrepresented the process that it would use to screen employees working on development of the NPAC, such a misrepresentation would be material. The security of the NPAC was an indispensable requirement in the selection process for the LNPA, as the FBI and other law enforcement agencies explained, and as the Commission agreed.[17] The Commission specifically relied on Ericsson's commitments to conclude that Ericsson would not expose the NPAC to a cybersecurity threat.[18] Because the Commission relied on the representations in its

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[16] *See id.* ¶ 125.

[17] *See* Federal Law Enforcement Reply Comments at 6 ("LNPA personnel charged with the responsibility of secure network access must be U.S. citizens, capable of holding and maintaining a security clearance."); *Selection Order* ¶¶ 101-102. The extent to which the Commission and law enforcement agencies relied on Ericsson's representations is unclear because the report of the Office of the Director of National Intelligence on national security implications related to the LNPA selection process was never made public, despite Neustar's repeated requests. *See, e.g.*, Letter of Aaron M. Panner, Counsel to Neustar, to Marlene H. Dortch, Sec'y, FCC, CC Docket No. 95-116, WC Docket No. 09-109 (Mar. 19, 2015).

[18] *Selection Order*, ¶ 126.

decision to select Ericsson as the LNPA, it was material. *See Algese 2 s.c.a.r.l. v. United States*, 125 Fed. Cl. 431, 440 (2016). Indeed, the materiality of the representations is confirmed by the Commission's decision to require Ericsson to abandon the software it had already developed and to start the development of the NPAC code from scratch.

These apparent misrepresentations are material for an additional reason: while carefully avoiding on-the-record predictions about the length of the transition, Ericsson has consistently represented that Ericsson's proposal would deliver substantial cost savings notwithstanding transition costs, implying that the transition could be completed relatively quickly. Even leaving aside whether Ericsson has been candid about the likely timing of transition, the fact that its violations of the *Selection Order* led to the requirement that it start development of NPAC code from scratch a full year *after* the *Selection Order* means that the transition will be severely delayed – another matter that Ericsson has completely failed to address on the record. Given the centrality of cost to the Commission's selection decision, the impact of Ericsson's conduct on transition timing undermines the Commission's selection decision in a fundamental way.

The Commission should require Ericsson to resolve, on the record, the serious concerns about its candor that the events of the last several weeks have raised.

II. IF ERICSSON MADE A MATERIAL MISREPRESENTATION DURING THE SELECTION PROCESS IT MUST BE DISQUALIFIED FROM SERVING AS THE LNPA

If the Commission determines that Ericsson made a material misrepresentation during the selection process, the proper remedy is to disqualify Ericsson from serving as the LNPA.

When a bidder or applicant makes a material misrepresentation, it undercuts a central assumption in the selection process: that the Commission can rely on the applicant's statements. If Ericsson misled the Commission with respect to the security of the NPAC it was developing – a matter of critical importance – it would cast doubt on the truthfulness of every statement in its

proposal. For example, not only did Ericsson represent that it would ensure that the NPAC was developed by U.S. citizens, but it also represented that no foreign-developed code would be repurposed for use in the NPAC. Such a representation is very difficult to verify. Moreover, any misrepresentation concerning matters related to the security of the NPAC would injure Neustar, by skewing the competitive selection process. Therefore, the proper remedy for a material misrepresentation would be to disqualify Ericsson from serving as the LNPA.

First, in a government procurement, an offeror's misrepresentation that materially influences an agency's consideration of its proposal provides a basis for proposal rejection or termination of a contract award based upon the proposal. *See Algese 2*, 125 Fed. Cl. at 440. "Where, as here, a contracting officer relies on an offeror's misstatement, the award is arbitrary and capricious." *Id.* (citing *Acrow Corp.of Am. v. United States*, 97 Fed. Cl. 161, 175-76 (2011)).

This doctrine originated in the Government Accountability bid protest *Informatics, Inc.*, 57 Comp. Gen. 217 (1978). The contract awardee had falsely represented during the bidding process that a number of employees of the contract incumbent had told the awardee that they would accept a position with the awardee should it receive the contract, and the agency relied on the misrepresentation. *See id.* at 223-25. The Comptroller General recommended that the awardee be disqualified, stating:

> In the course of discussions in negotiated procurements contracting agency representatives frequently ask for information from an offeror. The agency has a right to rely on the factual accuracy of the responses. Given the importance of such discussions and the delays and other difficulties which would be experienced if agency personnel were required to verify each response, we believe that *the submission of a misstatement*, as made in the instant procurement, *which materially influences consideration of a proposal should disqualify the proposal. The integrity of the system demands no less. Any further consideration of the proposal in these circumstances would provoke suspicion and mistrust and reduce confidence in the competitive procurement system.*

Id. at 225 (emphases added). The Federal Circuit approved this reasoning in *Planning Research Corp. v. United States*, 971 F.2d 736, 741 (Fed. Cir. 1992), affirming the disqualification of an awardee that misrepresented the need for employees of the contract incumbent to be retained.

The Court of Federal Claims therefore generally requires disqualification when a bid proposal contains a misrepresentation that the agency relies on. For example, in *Algese 2*, the Court of Federal Claims disqualified a contract awardee upon finding that it intentionally misrepresented its history of corruption and fraud, holding:

> Material, intentional misrepresentations in a proposal disqualify an offeror from competing for the contract award. As material, intentional misrepresentations taint the award process, prevent government officials from determining the best value to the government and retard the competitive bidding process, an offeror who is found to have made such a misrepresentation will lose its right to execute the solicited work or bid on the reprocurement of the contract.

125 Fed. Cl. at 440 (citations omitted). In *Blue & Gold Fleet, LP v. United States*, although the court ultimately did not find a misrepresentation, it stated, "[t]o preserve the integrity of the solicitation process when such a material misrepresentation influences the award of the proposal, the proposal *is disqualified* from consideration." 70 Fed Cl. 487, 495 (2006) (citing *Planning Research Corp.*, 971 F.2d at 741) (emphasis added). And in *GTA Containers, Inc. v. United States*, the court entered an injunction against performance on the contract after finding a misrepresentation occurred. *See* 103 Fed. Cl. 194, 207-09 (2012).

Although this is not a government procurement, the Commission has maintained direct responsibility for the selection of the LNPA vendor, and these cases are therefore on point. If Ericsson has made material misrepresentations related to the security measures it intended to take with respect to the development of the NPAC, those misrepresentations tainted the LNPA selection process and impaired the ability of the Commission to rely on Ericsson's assertions in its bid proposal.

Second, the conclusion that disqualification is the proper sanction is further supported by the Commission's own precedent, which attaches crucial importance to candor and integrity, and the terms of the RFP. Rule 1.17 prohibits any intentional, material misrepresentation in an adjudicatory matter within the Commission's jurisdiction. *See* 47 C.F.R. § 1.17(a)(1);[19] *see also id.* § 1.65(a). "[T]he Commission is not expected to play procedural games with those who come before it in order to ascertain the truth." *RKO Gen., Inc. v. FCC*, 670 F.2d 215, 229 (D.C. Cir. 1981). The Commission's character qualification standards apply "to the misconduct of Commission regulatees generally."[20] The RFP also required "[a]ll submissions in connection with this RFP, including this RFP survey must be complete, truthful, and accurate. Material misrepresentations or omissions may result in disqualification or reductions in scoring."[21] Had a material misrepresentation by Ericsson been discovered in time, that might well have changed the outcome of the selection process.

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[19] The selection process should have been conducted as a notice-and-comment rulemaking, not an adjudicatory proceeding, as Neustar has consistently maintained. *See* Brief of Petitioner Neustar, Inc., No. 15-1080, at 52-61 (D.C. Cir. filed Dec. 17, 2015). In any event, the requirement of candor is a principle that predates and is independent of the codified rule, and Ericsson is estopped from challenging the applicability of Rule 1.17 to its conduct throughout this proceeding.

[20] Memorandum Opinion and Order, *Ex Parte Complaint of Marcus Spectrum Sols., LLC*, 26 FCC Rcd 2351, ¶ 19 n.50 (2011) ("The Character Policy Statement, originally formulated to evaluate the misconduct of broadcast applicants, has since been applied to the misconduct of Commission regulatees generally."); *see also* Order and Notice of Apparent Liability, *MCI Telecommunications Corporation Petition for Revocation of Operating Authority*, 3 FCC Rcd 509, ¶ 31 n.14 (1988) (using the broadcast character qualification standards to evaluate common carriers); Public Notice, *Applications Granted for the Transfer of Control of STI Prepaid, LLC and STI Telecom Inc. to Angel Americas LLC*, 29 FCC Rcd 7956, 7958 (2014) (evaluating the transfer of international section 214 authorizations using broadcast character qualification standards).

[21] RFP § 1.3; *see also* VQS § 1.4 ("All submissions in connection with this RFP, including this Vendor Qualification survey must be complete, truthful, and accurate. Material misrepresentations or omissions may result in disqualification or reductions in scoring.").

In licensing proceedings, for example, the Commission has repeatedly relied on the requirement of candor to deny or revoke a license when confronted with a material misrepresentation. "We believe it necessary and appropriate to continue to view misrepresentation and lack of candor in an applicant's dealings with the Commission as serious breaches of trust. The integrity of the Commission's processes cannot be maintained without honest dealing with the Commission by licensees."[22] In other words, "effective regulation is premised upon the agency's ability to depend upon the representations made to it by its licensees, [so] 'the fact of concealment is more significant than the facts concealed.'" *Leflore Broad. Co. v. FCC*, 636 F.2d 454, 461 (D.C. Cir. 1980) (quoting *FCC v. WOKO, Inc.*, 329 U.S. 223, 227 (1946)) (alterations in original omitted). Therefore, "it is well recognized that the Commission may disqualify an applicant who deliberately makes misrepresentations or lacks candor in dealing with the agency." *Schoenbohm v. FCC*, 204 F.3d 243, 247 (D.C. Cir. 2000).

In *Schoenbohm*, the Commission refused to renew a license because the licensee misrepresented his convictions to the Commission and the existence of improper *ex parte* contacts. *See id.* at 247-49. The D.C. Circuit affirmed the Commission's decision because "[a] licensee's complete candor is important to the [Commission]." *Id.* at 247. In *Swan Creek Communications, Inc. v. FCC*, the Commission denied a licensing application because the applicant misrepresented its finances during the licensing review. 39 F.3d 1217, 1220-21 (D.C. Cir. 1994). The D.C. Circuit affirmed, noting that "false statements in the course of the hearing process are, in and of themselves, of substantial significance." *Id.* at 1222. The Court further emphasized that "specific notice to an applicant that he must testify truthfully is superfluous,"

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[22] Report, Order and Policy Statement, *Policy Regarding Character Qualifications In Broadcast Licensing*, 102 F.C.C.2d 1179, 1211 (1986).

and that, whether or not there is a prior warning, "false testimony may lead to disqualification." *Id.* at 1222 (quoting Decision, *Old Time Religion Hour, Inc.*, 95 F.C.C.2d 713, 719 (Rev. Bd. 1983)). And in *Garden State Broadcasting L.P. v. FCC*, the Commission disqualified a licensing application because the applicant "deliberately withheld evidence" after the administrative law judge noted the issue was material, and the D.C. Circuit affirmed. 996 F.2d 386, 393-94 (D.C. Cir. 1993) ("Garden State knew the issue was of paramount importance yet it did not make any effort to produce the information until the [Commission] forced it to do so."); *see also Leflore Broad.*, 636 F.2d at 461 (affirming the Commission's order disqualifying a licensing applicant) ("[T]he [Commission] would be derelict if it did not hold broadcasters to high standards of punctilio, given the special status of licensees as trustees of a scarce public resource.") (footnote omitted); *RKO Gen.*, 670 F.2d at 229 (affirming the Commission's order denying a licensing renewal) ("RKO had an affirmative obligation to inform the Commission of the facts the [Commission] needed in order to license broadcasters in the public interest.").[23]

Finally, these decisions reveal a common principle that applies equally to the LNPA selection process. The Commission cannot independently verify each statement or promise in a bid proposal. It must, therefore, rely on bidders to tell the truth. A material misrepresentation or omission – or misleading statements – undermines that basic assumption, and the integrity of the selection process.

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[23] *See also* Decision, *James A. Kay, Jr., Licensee of One Hundred Fifty Two Part 90 Licenses in the Los Angeles, California, Area*, 17 FCC Rcd 1834, ¶ 100 (2002) (revoking a license where licensee "deliberately withheld material information from the Commission"); Decision, *Ronald Brasher, Licensee of Private Land Mobile Stations WPLQ202, et al.*, 19 FCC Rcd 18462, ¶ 127 (2004) (revoking all licenses because of the licensees' misrepresentations in multiple applications and filing applications in the names of surrogate licensees to "deceive the Commission").

Furthermore, concerns about integrity and trustworthiness are particularly urgent in this context because of the sensitivity of the LNPA's role. The LNPA is entrusted with carriers' competitively sensitive information and must be trusted not only to safeguard that information, but also to perform its function in a scrupulously neutral manner. If a vendor is capable of misleading the FCC and playing fast and loose with explicit requirements related to the security of the NPAC, what assurance can the Commission (or smaller carriers that have already voiced concerns) have that the vendor will take its other obligations any more seriously? Given the critical importance of LNPA neutrality – and the difficulty of detecting departures from scrupulous neutrality – the need to resolve the question of what could have led to the remarkable disclosures of April 2016, on the record and in the open, is essential.

If Ericsson in fact made misleading or false statements, it is not enough that it subsequently agreed to abide by what it had already promised. As the Supreme Court has said, "[t]he fact of concealment may be more significant than the facts concealed" because it reveals "[t]he willingness to deceive a regulatory body." *WOKO, Inc.*, 329 U.S. at 227. The Commission should require Ericsson to put the relevant facts in the record and, if the Commission is confronted with a material misrepresentation, disqualify Ericsson to preserve the integrity of the selection process.

CONCLUSION

For the reasons set forth above, the Commission should promptly issue an order to show cause why Ericsson should not be disqualified from serving as the LNPA.

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