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June 6, 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 June 2, 2016, Michael Calabrese, Director, Wireless Future Program at New America's Open Technology Institute,<sup>1</sup> as well as David J. Malfara, Sr. and the undersigned on behalf of the LNP Alliance<sup>2</sup> (together, the "Parties"), met with Diane Cornell, Special Counsel to Chairman Wheeler, and Kris Monteith, Ann Stevens, and Sanford Williams of the Wireline Competition Bureau to discuss the need for the Commission to address during this final review the shortcomings of the LNPA Transition and make improvements to all aspects of the iconectiv Master Service Agreement ("iconectiv MSA" or "MSA").

Based on prior Commission orders in this proceeding, the Parties do not believe that the Commission's authority to review the iconectiv MSA is limited to reviewing issues of neutrality and national security. The March 2015 Selection Order<sup>3</sup> that awarded the LNPA contract to iconectiv grants the Commission broad authority to supervise the negotiation of the MSA at every stage and to review every aspect of the MSA prior to approving it. The Selection Order

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> *Telephone Number Portability et al.*, CC Docket No. 95-116; WC Docket Nos. 09-109, Order, ¶ 195 (rel. March 27, 2015) ("Selection Order").

directed “the NAPM, with Commission oversight, to negotiate the terms of the LNPA contract with Telcordia in accordance with this Order.”<sup>4</sup> The Selection Order provided:

We concur with the Bureau’s assessment in the *March 2011 Order*, that the NAPM has the resources and expertise to handle the final contract negotiations with Telcordia. However, the Commission will exert oversight of the final contract negotiations. As stated in the May 2011 Order, the Commission has “final approval of the contract.” The NAPM must coordinate with various bureaus within the Commission, primarily the Wireline Competition and the Public Safety and Homeland Security Bureaus and the Office of General Counsel. Moreover, we direct the NAPM to cooperate with any other relevant government agencies in completing its negotiations.<sup>5</sup>

The May 2011 Order sheds further light on the broad authority of the Commission to review every aspect of the MSA at this final approval stage:

NASUCA questions “the advisability of the FCC authorizing the NAPM to ‘negotiate a contract(s) with the selected vendor(s) upon final approval of the vendor(s).’” NASUCA submits that the NANC/NAPM Proposal should be “amended to include FCC involvement with the negotiation process or, in the alternative, be amended to clarify that the FCC has final approval authority of the contract negotiated by NAPM.” The Bureau finds that the NAPM has the expertise, experience and is in the best position to negotiate a contract with the selected vendor(s). However, the Bureau agrees with NASUCA that the Proposal should reflect that the Commission has final approval authority of the contact.<sup>6</sup>

NASUCA raised the issue in 2011 that consumer interests would not be represented if the negotiations were left to NAPM and the LNPA vendor. The Bureau agreed that, despite NAPM’s expertise and experience, it was critical that the FCC have final approval authority over the entire negotiation. This consensus was reinforced by the Commission in the Selection Order which found that the Commission should have final authority over the contract, specifically relying on that portion of the May 2011 Order.<sup>7</sup> The alternative view that the Commission exerts oversight over every aspect of the contract during contract negotiations, not to mention after contract approval, but is limited to reviewing only certain issues at the critical juncture of the final approval process makes no sense. The fact that the Commission emphasized that Telcordia’s very selection was contingent on compliance with neutrality and security issues<sup>8</sup> may have been intended to reinforce the importance of those issues, but it did not deprive the

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<sup>4</sup> Selection Order, ¶ 193.

<sup>5</sup> *Id.*, ¶ 195 (citations omitted).

<sup>6</sup> *Telephone Number Portability et al.*, CC Docket No. 95-116; WC Docket Nos. 09-109, Order, 26 FCC Rcd 6839, ¶ 8 (Wireline Comp. Bur. 2011) (“May 2011 Order”) (citations omitted).

<sup>7</sup> Selection Order, ¶ 195 & fn. 668.

<sup>8</sup> Selection Order, ¶ 193.

Commission of its broad authority to review every aspect of the MSA, which consumer advocates had specifically requested and the Bureau had granted in 2011.

In the meeting, the Parties continued to emphasize several key areas that we believe should be the focus of the Commission's review. The Parties have offered a number of constructive comments as to how to significantly improve the LNPA Transition process and the iconectiv MSA. Presumably, the purpose of Commission and public review is to consider such areas of improvement and adopt those that will benefit consumers, smaller carriers, and the LNPA Transition process in general. The Parties continued to urge the Commission to require such changes, which do not preclude the speedy approval of a modified MSA in the near future. The Parties focused, as in past filings, on the following areas of potential improvement.

The IP Transition: The Parties continued to reinforce the fact that the savings for smaller carriers and consumers from completing the IP Transition—including routinized, nondiscriminatory IP interconnection—will be of much greater magnitude than the savings promised by the lower bid of the new LNPA Provider. Therefore, if requiring that the LNPA Transition incorporate the IP Transition were to delay the LNPA Transition slightly but expedited the IP Transition, smaller carriers and consumers would be much better off, as would competition. The publicly available Transition Oversight Manager (“TOM”) transition plans and the MSA fail to make virtually any mention of iconectiv's plans to incorporate the IP Transition into the LNPA Transition. This could be interpreted to be an endorsement of the view of CenturyLink, a NAPM member, that the IP Transition of the Number Portability Administration Center (“NPAC”) cannot begin until the LNPA Transition is complete.<sup>9</sup>

The Parties raised concerns about iconectiv's readiness to incorporate the IP Transition into the LNPA Transition as early as December 2014.<sup>10</sup> The Commission should ensure that the IP Transition is incorporated into the LNPA MSA and Transition by including language in its order reviewing the MSA that the IP Transition must be given the highest priority by iconectiv and the NAPM and that the IP Transition should not be put on hold for the next two years. The Commission should also establish workshops where the industry, including those who cannot afford to join the NAPM, work on a timetable to incorporate the IP Transition into the LNPA Transition. As the Commission has recognized, Telcordia has stated that its bid is “based on its understanding that it will need to replicate all of the functionalities of the existing NPAC, as well as its recognition that it will have to implement future changes, such as the IP transition, and the

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<sup>9</sup> 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).

<sup>10</sup> Letter from James C. Falvey, Counsel to LNP Alliance, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket No. 09-109, at 2 (filed Dec. 11, 2014) (stating that the role of the NPAC in a post-IP Transition world has not been defined and the bidders may not have made the same assumptions). *See also* Selection Order, ¶ 77 & fn. 285.

service improvements it promised.”<sup>11</sup> The approval of the MSA is the perfect opportunity for the Commission to ensure that iconectiv is committed to incorporating the IP Transition and that it does not share the view of CenturyLink that the IP Transition cannot proceed until LNPA Transition is complete.

Neutral, Independent and Mandatory NPAC: The Commission should also make a strong statement in support of a neutral, independent and mandatory NPAC for the routing of telecommunications services and the porting of numbers associated with those services. The Parties have previously expressed our concern that the NPAC could be replaced by third party registries, citing to the iconectiv White Paper from May 2014 that advocated non-neutral, third party ENUM registries.<sup>12</sup> A recent ATIS Packet Technologies and Systems Committee (“PTSC”) draft technical report for Nationwide Number Portability (“NNP”) (“PTSC NNP Report”)<sup>13</sup> provides additional evidence that there are efforts afoot to replace the statutorily-mandated neutral NPAC with private registries. A copy of the PTSC NNP Report, highlighted for emphasis by the LNP Alliance, is attached hereto.

The report suggests, *inter alia*, that “administrative processes that are handled today by a single authoritative registry can be handled by multiple distributed registries, all managing the same information.”<sup>14</sup> It goes on to say that, “Alternatively, these administrative processes could be integrated with existing processes such as North American Numbering Plan Administration (NANPA), National Number Pool Administration (PA), Local Exchange Routing Guide (LERG), and Local Number Portability Administration (LNPA).”<sup>15</sup> While retaining the current statutory system of neutral administration is at least contemplated, the Commission should clarify in this order that a neutral NPAC is not a policy alternative but a statutory imperative.

The PTSC NNP Report contains many other proposals that the Commission should be concerned about, including discriminatory interconnection,<sup>16</sup> new surcharges on small and

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<sup>11</sup> Selection Order, ¶ 141 & fn. 485 (citing Letter from John T. Nakahata, Counsel to Telcordia Technologies, Inc., d/b/a iconectiv, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket No. 09-109, at 3 (Oct. 27, 2014)).

<sup>12</sup> 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, at 7 & fn. 7 (May 27, 2016).

<sup>13</sup> ATIS PTSC Technical Report on a Nationwide Number Portability Study, M. Dolly (AT&T), PTSC Chair.

<sup>14</sup> PTSC NNP Report, § 8.2.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*, § 9 (the draft PTSC NNP Report recommends that if a smaller carrier cannot negotiate an interconnection agreement with a larger carrier, instead of arbitration under sections 251 and 252 of the Communications Act, 47 U.S.C. 251, 252, the carrier would be relegated to an inferior-quality Point of Interconnection (“POI”) on the public Internet).

<sup>16</sup> *Id.*

regional carriers,<sup>17</sup> and the elimination of the N-1 query requirement.<sup>18</sup> Some have suggested that the Commission would be regulating too ambitiously to concern itself with such details. But the fact is that the largest carriers in the NAPM and other industry fora, along with iconectiv, have indicated that they are considering implementing discriminatory and non-neutral mechanisms if left to their own devices. This is precisely the reason why the Parties strongly urge the Commission to issue an order that delves into the details and requires, *inter alia*, that the NPAC remain the one-stop, single, neutral database for the rating and routing to ported numbers of calls, regardless of technology (TDM or IP).

NAPM Composition: The Parties again urged the Commission to address the lopsided composition of the NAPM, weighted towards nine industry heavyweights. The Commission could make its approval of the MSA conditional on the NAPM broadening its membership, through consultation with smaller companies, consumer groups and state PUC representatives. Absent such a broadening of the NAPM, larger carriers will continue to maintain an inside track and smaller carriers, consumers and others left outside of the process will be constantly bringing their complaints to the Commission.

Increased Transparency and Transparent Timeframes: It has been suggested that a Gantt chart with detailed timelines cannot be developed until the MSA is approved. The Parties do not agree. Simply because the “start date” of a project is not yet known, does not mean that the tasks, durations, and interdependencies of the various workflows comprising the transition are not known. In fact, it would be extremely disconcerting if, only when the MSA is approved, were the TOM to begin to develop a detailed project plan. The parties believe that such a detailed plan does exist and do not understand why the TOM and iconectiv cannot release a public Gantt chart so that the public understands the interplay between the various aspects of the LNPA Transition. The fact that the testing and data migration intervals were recently cut in half suggests that additional attention to the TOM/iconectiv timelines is necessary. The Parties recommend that additional portions of the MSA be made public and that a detailed Gantt chart of the LNPA Transition be developed and made public. This would be of significant benefit to smaller companies for budgeting and personnel planning purposes.

Revisions to the MSA: The Parties have provided detailed revisions to the MSA in their May 17 *ex parte* letter filing.<sup>19</sup> The Commission should consider these suggestions and require these modifications to the MSA. If there is no intent to require such changes, what is the purpose of public review? As noted, there is no subject matter limitation on the changes the Commission can require. Moreover, Users of the NPAC must sign a User Agreement that incorporates the

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*, § 8.1.2.

<sup>19</sup> 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).

MSA in its entirety, so smaller companies should have a good faith opportunity to recommend revisions. The revisions recommended by the Parties are all constructive changes, including:

- Eliminating the NAPM as the final arbiter of disputes concerning who can access the NPAC as a user and on other issues. *See, e.g.*, § 6.1.2.2.2.
- NAPM also makes the final annual determination as to who constitutes a User of the NPAC and can continue to use it. There should again be recourse beyond the NAPM on this issue. § 6.1.2.2.4.5.
- iconectiv will be evaluating user applications until a neutral third party NUE comes on board. § 6.2.5.6. The NUE should be hired from the outset. This appears to be another example of rushing the LNPA Transition forward while sacrificing neutrality.
- Permitted Use findings are appealed to the NAPM and there is no recourse beyond to an impartial, representative body. § 6.2.6.4.3.3.1. Providers could be shut out of the NPAC by this nonappealable decision by the nonrepresentative NAPM.
- The MSA defines Permitted Use using the term “telecommunications services,” but completely departs from the statutory definition of “telecommunications services” and creates its own definitions.<sup>20</sup> *See* §§ 6.1.2.2.4.2, 6.1.2.2.4.3. These new NAPM-iconectiv definitions are vague, at times incoherent, and unmoored from any statutory definitions. The Parties intend to file a separate letter on this issue in the near future.

These are just some of the public provisions that require Commission attention and a more complete list of issues, including those relating to Confidential provisions, was provided in the Parties’ May 17 ex parte. The Commission should not accept the excuse that provisions are similar to those in the Neustar contract. If the MSA contains provisions that are inadequate or unfair to smaller carriers or consumers, it should be revised before the Commission approves it. Now is the time to fix any such issues.

The Parties also noted that Commission intervention is necessary because we have had very little success in opening up a two-way dialog with the TOM, NAPM and iconectiv. Although there have been cosmetic changes, like the TOM posting questions and answers on the website, the TOM typically has not been willing to share its processes or change them upon request. By way of example, attached are a series of recent questions from the Parties and the TOM’s responses which largely consist of saying that they’re going to keep doing what they’ve already been doing. The Commission needs to give strong direction to the TOM, NAPM, and iconectiv if the concerns of smaller carriers and consumers are to be incorporated into the LNPA Transition.

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<sup>20</sup> The recent ex parte of NAPM on this subject raises more questions than it answers. Letter from Todd D. Daubert, 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 (June 2, 2016). The Parties intend to respond to this ex parte in a separate filing in the near future.

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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

Enclosures

cc:	Diane Cornell	Nick Degani
	Kris Monteith	Rebekah Goodheart
	Ann Stevens	Travis Litman
	Sanford Williams	Neil Dellar
	Marilyn Jones	Michael Calabrese
	Michelle Sclater	Dave J. Malfara, Sr.
	Amy Bender	