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June 9, 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 is writing to respond to the ex parte filed by the North American Portability Management LLC (“NAPM”) on June 2 (“NAPM Ex Parte”).² Rather than recognizing that there have been shortcomings in the LNPA Transition and that the iconectiv Master Service Agreement (“iconectiv MSA” or “MSA”) requires critical clarifying revisions, NAPM appears determined to dig in its heels and reject every one of the revisions proposed by the LNP Alliance, no matter how much those revisions will help to clarify and improve the MSA.³

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 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 2 (June 2, 2016) (“NAPM Ex Parte”).

³ The LNP Alliance recognize that the attorneys and companies involved in drafting the MSA invested a great deal of time and effort to complete the document in a short period of time. However, we do not understand the resistance to making improvements to the document..

In an ex parte filed on May 17 (“May 17 Ex Parte”),⁴ we provided a list of constructive improvements to the MSA, many of which are necessary to provide clarity to the MSA and to protect the rights of smaller carriers. Every carrier that will become a User of the NPAC must sign the User Agreement without revision, and the User Agreement in turn incorporates the MSA in its entirety by reference. This very likely the last opportunity for smaller carriers to have input into the MSA. NAPM has suggested that the Commission should approve the agreement with known flawed provisions and that corrections can be made at a later date.⁵ This is a cynical attempt to avoid making any changes to the MSA before approval.

First and foremost, the Commission has full authority to require revisions to the MSA at this stage and should exercise that authority now to make noncontroversial and necessary corrections to the MSA. As detailed in our ex parte filed on June 6, 2016, the Commission has “final approval of the contract” and the purpose of that approval authority is to eliminate known flaws in the MSA.⁶ Furthermore, NAPM knows well that the process to make revisions to the MSA after Commission approval would be lengthy and bureaucratic. It also appears, based on NAPM’s current resistance to necessary revisions, that NAPM and the largest NAPM companies would oppose further revisions. Before any changes could be made to the MSA after Commission approval, companies will be required to agree to its terms and the LNPA Transition will be in process if not all but completed, assuming any changes were to make it through the bureaucracy. The Commission reserved its MSA approval authority to protect consumers and did not want the NAPM and the selected vendor to have the final say as to the terms of the MSA. This is the last meaningful opportunity for the Commission to require such revisions and the Commission should simply order NAPM to make the necessary revisions.

NAPM’s Convoluting Definitions: In the NAPM Ex Parte, NAPM has attempted to defend the convoluted definitions in the MSA, including the MSA’s repeated use of the term “telecommunications services” in a manner that is inconsistent with the statutory definition.⁷ While it appears the MSA limits NPAC access to providers of “telecommunications services,” in fact NAPM and iconectiv adopted their own set of confusing MSA definitions, repeatedly using the term “telecommunications service” and “telecommunications service provider” in a manner that conflicts with statutory definitions in the Communications Act (the “Act”). It is not sufficient that the MSA makes sense to the NAPM carriers and iconectiv alone. It has to be sufficiently plainly worded so that the hundreds of carriers and ancillary service providers that must sign it understand the terms to which they will be committed. A brief review of the

⁴ 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 Parties as of May 17, 2016 (May 17, 2016).

⁵ NAPM Ex Parte at 5.

⁶ *Telephone Number Portability et al.*, CC Docket No. 95-116; WC Docket Nos. 09-109, Order, ¶ 195 (rel. March 27, 2015) (“Selection Order”).

⁷ 47 U.S.C. § 153(53).

definitions created by NAPM and iconectiv reveals a confusing series of definitions that must be clarified before the MSA can be approved by the Commission.

Taking into account the explanations in NAPM's June 2 ex parte, the following is a brief review of the significant definitional flaws in the MSA that require revisions:

1. "Telecommunications service provider" definition: This MSA definition extends beyond just providers of "telecommunications services" as defined by the Act. In the MSA, it includes interconnected VoIP providers, which the Commission has not classified as providers of "telecommunications services" under the Act. To avoid confusion, the term TSP, if it is to include interconnected VoIP providers, should be shortened in the MSA to "telecommunications provider" (which for simplicity's sake could still be referred to throughout the MSA as a TSP).

NAPM's claim that the regulatory classification of an entity "is entirely irrelevant"⁸ to whether a company is a TSP under the MSA is simply wrong. Whether a provider can obtain direct access to numbering resources, a prerequisite to becoming a TSP per the MSA's definitions, is directly related to whether they meet the statutory definitions of a "telecommunications service" carrier or an "interconnected VoIP provider."

2. "Telecommunications service provider" definition: As detailed in our May 17 Ex Parte, the definition is vague and creates uncertainty by saying "an entity that has obtained *or is eligible to obtain*" NANP number resources. The phrase "is eligible to obtain" is vague and should say: "an entity that has obtained ~~or is eligible~~ all necessary federal and state commission approvals." NAPM saw fit to clarify in its ex parte that the FCC will determine "which entities are eligible to receive numbers."⁹ The MSA itself needs the same clarification.

3. The definitions in MSA Section 6.1.2.2.4.3 should be included in the Article 31 definitions section of the MSA for clarity (with the caveat as used in Article 6).

4. "PTRS" definition: There is no clear definition of "PTRS" in the MSA. The definitions state that it is "a provider of telecommunications-related services as described in Article 6." But nowhere in Article 6 is there a definition of PTRS. Combined with the ambiguity of the "PTRS User" definition below, there is far too much leeway granted to NAPM and iconectiv. To the extent PTRS has already been defined in the RFP, for example, that definition should be inserted into the MSA definitions section. The definition should perhaps be "to route, bill or rate calls, or to perform network maintenance as specified in Section 6.1.2.1." One way or another, it needs to be defined.

⁸ NAPM Ex Parte at 2. *See also* NAPM Ex Parte at 3.

⁹ NAPM Ex Parte at 2 & fn. 7.

5. “PTRS User” definition: The “PTRS User” definition is far too broad and gives complete discretion to iconectiv and NAPM to decide which entities will have NPAC access. “PTRS User” is defined as “a PTRS (i) determined to have a need to access any part of the NPAC/SMS, such as to route, bill or rate calls, or to perform network maintenance as specified in Section 6.1.2.1” First, PTRS is not defined. Second, the MSA defines a PTRS User as any entity the NAPM determines shall have access to the NPAC/SMS. Third, “such as” should be replaced by “in order to” in the definition so NAPM’s discretion begins to have some clear boundaries. The “PTRS” and “PTRS User” definitions must be read in light of the fact that the NAPM has the authority to make a series of critical final, nonappealable decisions under the MSA. Again, far too much authority and discretion rests with the NAPM.

6. “Network maintenance in connection with providing telecommunications services” definition (§ 6.1.2.2.4.3(f)): Again, the word “services” should be left off because it’s confusing, unnecessary, and conflicts with the statutory definition of “telecommunications services.” The term is misused in § 6.1.2.2.4.1 where the words “or facilitating” are inserted, creating confusion about the meaning of “telecommunications services” in that sentence. All the more reason not to have “telecommunications services” appear anywhere in the agreement where it is not intended to confer its statutory meaning.

7. “Other” category (§ 6.1.2.1): iconectiv classifies each New User as a TSP, PTRS, or “other.” But if iconectiv cannot classify the New User as either a TSP or a PTRS, the New User is referred to NAPM for further consideration. Although the MSA makes clear that only Users and PTRS Users can access the NPAC, the MSA provides no further direction as to how the NAPM will handle those “other” Applicant referred back to the NAPM. With many other appeal routes ending at the NAPM, there is a clear need for more detail here, including an appeal route that extends beyond the NAPM to FCC Enforcement.

While NAPM attempted in the NAPM Ex Parte to explain its convoluted definitions, those explanations only lead to more questions about the details of NAPM’s unique definitions. The LNP Alliance urges the Commission to clear up these definitional issues, but also the other issues raised by the LNP Alliance in the May 17 Ex Parte, before imposing the MSA in its current form on the hundreds of companies that will be required to sign it.

The TOM Should Disclose Its Underlying Timelines for the LNPA Transition: There is no reason the industry should have to wait until the MSA is approved before receiving a public Gantt chart and detailed timeline for the implementation of the LNPA Transition.¹⁰ As a practical matter, a Gantt chart can start with Day 1, MSA Approval, and run from there. If there is a reason why that information cannot be developed until the MSA is actually approved, no one has explained that basis. The LNP Alliance would certainly expect that such detailed timelines

¹⁰ See NAPM Ex Parte at 3.

already exist and would be very concerned if they have not been fully developed. Every company in the industry will benefit by being able to allocate personal and budget resources when a detailed timeline becomes public. Every company will be able to react and understand the impact of new developments once they know the interdependencies of the TOM's Gantt chart. The Commission should require that a detailed Gantt chart of the LNPA Transition be released as a precondition to its approval of the MSA.

NAPM Dues Structure: The NAPM has significant authority under the MSA, including multiple scenarios in the MSA where decisions cannot be appealed beyond the NAPM. The NAPM is controlling every key private decision relating to the LNPA Transition and is the exclusive industry party giving direction to the TOM. The NAPM is being reduced to just nine companies in an industry of hundreds of providers. There is an urgent need to broaden the membership of the NAPM by altering its dues structure to encourage smaller companies to join. An example of a dues structure that has been highly effective in attracting membership from companies of all sizes is available on the Incompas website.¹¹

The NAPM claims that trade associations are welcome to join NAPM so there is not an issue.¹² However, having trade associations join dilutes the representation of smaller carriers, with 30, 50 or 200 members given one seat at the table. Many trade associations representing smaller companies lack the financial resources and manpower to participate. Notably, no trade associations have joined NAPM to date. In addition, NAPM fails to address in the NAPM Ex Parte the LNP Alliance's repeated request for consumer and state commission representatives on NAPM, participation that would include for the first time consumer interests on the NAPM.

Transparency of the MSA: There still remain many portions of the MSA that are confidential and need not be. The User Agreements at Exhibit J are just one example. NAPM claims that competitive bidders should not be granted access to, for example, confidential pricing provisions.¹³ But the LNP Alliance has never contested that and this does not explain the much broader confidentiality claimed by NAPM. The claim that Users can review the MSA before signing their User Agreement¹⁴ is highly cynical: Telcordia has previously stated that individual Users cannot make changes to the User agreement and, once the Commission has approved the MSA, smaller carriers will have no meaningful opportunity to make changes to the MSA either. The Commission should make the User Agreements public as well as other portions of the MSA that have no reason to be confidential.

User Agreements: NAPM essentially argues in the NAPM Ex Parte that if the LNP Alliance has identified even legitimate problems with the MSA, they need not be rectified if the

¹¹ See Incompas website at <http://www.incompas.org/duesstructure> (last viewed on June 9, 2016).

Whether company size is measured by revenues or by some other metric, the Commission should require NAPM to adopt a dues structure that attracts smaller companies.

¹² *Id.* at 4.

¹³ NAPM Ex Parte at 4.

¹⁴ *Id.*

same problems existed in the Neustar MSA.¹⁵ The fact that a problem existed in the Neustar MSA is not a valid excuse to not fix it now that it has been identified. The NAPM claim that the LNP Alliance's claims are theoretical and have not caused "actual problems" in the past¹⁶ is also not valid. Many of the LNP Alliance's concerns with the User Agreement relate to fundamental process obstacles and procedural impediments in the User Agreements. If you review the issues raised by the LNP Alliance in the May 17 Ex Parte, there is every reason to think that these issues have frustrated smaller carriers in the past. It is also very clear that the NAPM has too much authority, and that NAPM and iconectiv gave themselves procedural benefits in the MSA that they did not give to smaller providers in the User Agreements.

The Future of a Neutral, Independent and Mandatory NPAC: The LNP Alliance filed two ex partes on June 6 where we emphasized, as we have in past filings, that the future of a neutral and independent NPAC is threatened by industry efforts to create third party ENUM registries and other private third party intermediaries.¹⁷ A recent ATIS Packet Technologies and Systems Committee ("PTSC") draft technical report for Nationwide Number Portability ("NNP") ("PTSC NNP Report")¹⁸ provides additional evidence that industry heavyweights would prefer to replace the statutorily-mandated one-stop neutral NPAC with private registries. 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."¹⁹ In its order addressing the MSA, the Commission should emphasize that the statutory role of the NPAC will not be displaced by private, for-profit, and potentially discriminatory third party intermediaries. A copy of the PSTC NNP Report, with highlights and comments by the LNP Alliance, is attached to this ex parte.²⁰

The LNP Alliance request that the Commission require the above course changes to the LNPA Transition and mandate revisions to the MSA as detailed herein and in the May 17 Ex Parte previously filed by the LNP Alliance. The requested changes would represent material, constructive improvements for the broader industry, can be effected in short order, and need not delay significantly the approval of the MSA by the Commission or the implementation of the LNPA Transition.

¹⁵ NAPM Ex Parte at 4.

¹⁶ *Id.*

¹⁷ 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 (June 6, 2016).

¹⁸ ATIS PTSC Technical Report on a Nationwide Number Portability Study, M. Dolly (AT&T), PTSC Chair.

¹⁹ PTSC NNP Report, § 8.2.

²⁰ Note that the version of the PTSC NNP Report attached to both June 6 Ex Partes filed by the LNP Alliance was intended to include similar highlighting but the filed versions were not highlighted. The highlighted version attached hereto is easier to review, with the highlighting focusing on those sections of the PTSC NNP Report of most concern to the LNP Alliance.

Ms. Marlene H. Dortch
June 8, 2016
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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
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