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John E. Logan
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December 9, 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
TW-A325
Washington, D.C. 20554

Re: North American Numbering Administrator
CC Docket 92-237, 95-155

Dear Ms. Salas:

Would you please placed the enclosed communication to the Chief of the Common Carrier Bureau in the record of the above proceeding. We have enclosed four copies.

Thank you for your courtesy.

Sincerely,

John E. Logan

John E. Logan

Enclosure

No. of Copies rec'd 0+3
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MITRETEK
SYSTEMS

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Dr. H. Gilbert Miller
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8 December 1998
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Mr. Lawrence E. Strickling
Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: North American Numbering Administrator
CC Docket 92-237

Dear Mr. Strickling:

Mitretek Systems, Inc., is a non-profit corporation performing scientific and technology research exclusively in the public interest. Our corporate technical breadth includes the full range of telecommunications and information technologies.

Mitretek respectfully requests that the Commission comply with its Third Report and Order (CC Docket No. 92-237) where it specifically states:

Innovative Technology in the Public Interest

> *If Lockheed defaults on its obligations as NANPA, or if the NANC determines that Lockheed does not perform those functions in a satisfactory fashion, Mitretek will have the opportunity to assume NANPA responsibilities for the remainder of the five-year term, if it still wishes to do so, without its undergoing another evaluation process.*

As stated to the Common Carrier Bureau, Lockheed Martin has elected to abandon its appointment as the NANPA, and to attempt to transfer to another corporate entity the NANPA functions.[1] Such a transfer was not envisioned as the procedure for addressing the designated NANPA's default on its obligations or its unsatisfactory performance. The Commission, given these current circumstances, has two options: abide by its Third Report and Order and name Mitretek, the designated alternate, as the NANPA successor; or, vacate its Third Report and Order and pursue other alternative procedures. Mitretek urges the Commission to abide by its Third Report and Order. This request is supported by the enclosed facts and circumstances.

Sincerely,

H. Gilbert Miller

[1] Letter from Yog R. Varma, Deputy Chief, Common Carrier Bureau, Federal Communications Commission, dated 1 December 1998, to H. Gilbert Miller, Vice President, Mitretek Systems

Summary

In its *Third Report and Order (CC Docket No. 92-237, Administration of the North American Numbering Plan)* released on 9 October 1997, the Federal Communications Commission (FCC) accepted the recommendation of the North American Numbering Council (NANC) that Lockheed Martin serve as the North American Numbering Plan Administrator (NANPA). In that *Third Report and Order*, the Commission also formally accepted the NANC's recommendation of Mitretek Systems as the alternate NANPA.

The Administration of the North American Numbering Plan (NANP) docket makes clear that all parties (i.e., the Commission, the NANC, the industry) understood the obligation of the NANPA to be neutral (i.e., a NANPA that does not favor any industry segment or technology) in its administration of the public resource. In September of this year, Lockheed Martin, Inc. ("Lockheed") announced its plan to combine with Comsat, a provider of telecommunications services and a common carrier. Lockheed, recognizing that this circumstance creates a neutrality violation, notified the Commission of its intent to sell the Lockheed NANPA. In its letter of 23 November 1998 to Lockheed and its letter of 1 December 1998 to Mitretek, the Commission appears to accept the premise that Lockheed can simply divest itself of its NANPA neutrality obligations by selling the NANPA responsibilities to whatever entity makes the best offer. This is contrary to the *Third Report and Order*, in which the Commission states:

> *If Lockheed defaults on its obligations as NANPA, or if the NANC determines that Lockheed does not perform those functions in a satisfactory fashion, Mitretek will have the opportunity to assume NANPA responsibilities for the remainder of the five-year term, if it still wishes to do so, without its undergoing another evaluation process.*

Mitretek urges the Commission to recognize the current neutrality violation as substantive and to instruct the Commission's designated alternate to begin transitioning the NANPA responsibilities.

A Sale of the NANPA to Solve Lockheed's Neutrality Problem is Not Allowed Under the Third Report and Order

Mitretek previously informed the Bureau of circumstances calling into question the independence of the Administrator selected last year by the NANC and the FCC, Lockheed.[2] Those problems continue unabated, and have now reached a head in Lockheed's announcement that it has decided to sell its NANPA function in light of

[2] Letter from H. Gilbert Miller, Vice President, Mitretek Systems, to William F. Caton, Acting Secretary, Federal Communications Commission, dated 4 September 1997

its acquisition of Comsat, which would uncontestably compromise Lockheed's neutrality if it attempted to retain the NANPA responsibilities.

The prospect of a sale of the NANPA responsibilities is a stunningly unacceptable resolution of the neutrality problem. The NANC, the Bureau, and the Commission engaged in a process that took several years and thousands of person-hours to assess who could best execute the responsibilities of neutral numbering administration in the public interest and in furtherance of the goal of local competition. It is unthinkable to allow Lockheed to turn around and sell this public interest responsibility to another entity the suitability of which the public interest, as NANPA, has never been examined by the NANC or the FCC.

The Bureau has taken an important initial step in notifying Lockheed that it must show cause as to why neutrality is not a fatal problem if the Comsat acquisition is consummated, and requiring Lockheed to spell out its plans. Mitretek applauds that action. But, beyond that, the Bureau must not buy into the notion that divestiture of the NANPA to the buyer of Lockheed's choice is an acceptable outcome. The public interest in the NANPA should not be regarded as a saleable commodity. The right outcome requires the vesting of these responsibilities in Mitretek—the only other entity whose suitability for the public interest responsibilities of the NANPA the NANC and the FCC *did* fully evaluate. Indeed, the NANC and the FCC foresightfully anticipated the possibility that it might become impossible for Lockheed to serve as NANPA, and designated an alternate NANPA—Mitretek.[3]

The NANC and FCC NANPA Selection Process Recognized That Having A Truly Neutral Numbering Administrator is Critical to Local Competition

In July 1995, the Commission commenced what became a lengthy and arduous process to select a neutral entity to serve as the NANPA. The NANP is the basic numbering scheme permitting interoperable telecommunications service within the United States, Canada, Bermuda and most of the Caribbean. The NANP is a critical element of a ubiquitous communications system, and its administration has always been fundamental. Subsequent to the AT&T divestiture in 1984, the responsibility for administering the NANPA was vested in Bellcore, which was owned and jointly controlled by the Regional Bell Operating Companies. The Commission's 1995 action established the NANC to oversee this important numbering allocation process. One of the NANC's first and foremost responsibilities was to recommend to the Commission an independent, non-government entity, not closely associated with any particular industry segment, to serve as the new NANPA. As the Commission was seeking to spur competition in the telephone markets, a neutral and independent entity, having no interest in those providing services, was deemed essential.

[3] Third Report and Order at para 67, 12 FCC Rcd at 23075

The Telecommunications Act of 1996 gave further impetus toward ensuring that a fair and impartial entity was selected to administer telecommunications numbering. The 1996 Act amended the Communications Act to require the Commission to designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis.

The NANC pursued a rigorous and exhaustive process establishing standards for the NANPA, examining the entities seeking to be designated, and making a recommendation to the Commission. In February 1997, the NANC released the NANP Requirements Document. The Requirements Document emphasized the absolute necessity that the entity seeking the NANPA responsibilities adheres to the neutrality criteria, as demanded by the law. Of particular emphasis was the need to disclose any affiliation or association with any telecommunications service provider.[4] Beyond demonstrating extensive technical capability, it also required an analysis of the entity's financial capability. The Requirements Document mandated a certification that the applicant and any subcontractor shall comply with all the provisions of the document.

The NANC established a Working Group to evaluate proposals submitted by four entities. The Working Group identified two entities, Lockheed and Mitretek, as the preferred choices for the new NANPA. A majority of the Working Group favored Mitretek. In May 1997, the full NANC reviewed the Working Group's Evaluation Report. Thirteen members of the NANC favored Lockheed, eleven voted for Mitretek. In its Order released on 9 October 1997, the Commission designated Lockheed Martin IMS, with Mitretek as the back up. Significantly, the Commission noted that if Lockheed defaults on its obligations as NANPA," ... Mitretek will have the opportunity to assume NANPA responsibilities for the remainder of the five-year term, if it still wishes to do so, without its undergoing another evaluation process."[5]

Less than one year later, on 28 September 1998, Lockheed and Comsat announced their intended merger. The announcement of the deal described the formation of a wholly owned subsidiary, Lockheed Martin Global Telecommunications, and the intention to provide satellite and terrestrial networking services for corporate and government users. The announcement touts the benefits to domestic and international users[6] of these services.

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[4] See North American Numbering Plan Administration Requirements Document, 20 February 1997 at section 1.2

[5] Third Report and Order at para 67, 12 FCC Rcd at 23075

[6] Lockheed Martin Corporation, "Lockheed Martin - Comsat to Combine," 20 September 1998, http://www.prnewswire.com/cgi-bin/stories.pl?ACCT=105&STORY=/www/story/09-20-1998/0000754336&EDATE=

The Bureau Has Commendably Recognized that the Neutrality of the North American Numbering Administration System is in Jeopardy

On 23 November 1998,[7] the Commission, through the Common Carrier Bureau, notified Lockheed, pursuant to 47 C.F.R, sec. 52.12 (e), of its concern that a violation of neutrality obligation had taken place. It sought information on Lockheed's purported intention to divest its NANPA responsibilities. The letter conveys an understanding that Lockheed will submit to the Commission its proposed divestiture plans. Apart from the Bureau's letter, there is virtually no other publicly-available information regarding the matter of the proposed sale of the public interest in the NANPA.

The letter's recitation of these circumstances indicates that a vital precept of the NANPA has been violated. It reflects that the sincere and committed efforts of the Commission and the NANC to ensure adequate numbering resources be available for competition is disrupted for what appears to be some indeterminable time. The Commission's rules have been undermined and, because of the resulting delay, the public substantially harmed.

Mitretek objects to the course and process this matter appears to be taking. The Commission's letter of 23 November 1998 to Lockheed and its letter of 1 December 1998 to Mitretek, appear to accept the premise that Lockheed can simply divest itself of its responsibility to carry out the NANPA responsibilities by selling the NANPA function to whatever entity makes the best offer. Mitretek challenges this premise. Neither the Commission's Order, the recommendation of the NANC, or the Requirements Documents of the NANC Working Group, contains any provision regarding transferring what the Commission itself characterizes as involving "a public resource and ... not the property of the carriers,"[8] yet Lockheed, and apparently the Commission, appear to be on this very course. In fact, the Commission's Order and the recommendation of the NANC both provide that:

> *If Lockheed defaults on its obligations as NANPA, or if the NANC determines that Lockheed does not perform those functions in a satisfactory fashion, Mitretek will have the opportunity to assume NANPA responsibilities for the remainder of the five-year term, if it still wishes to do so, without its undergoing another evaluation process.*

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[7] Letter from Yog R. Varma, Deputy Chief, Common Carrier Bureau, Federal Communications Commission, dated 23 November 1998, to Jeffrey E. Ganek, Senior Vice President and Managing Director, Lockheed Martin IMS

[8] Administration of the North American Numbering Plan, Notice of Proposed Rulemaking, CC Docket No. 92-237, 9 FCC Rcd 2068 (1994)

The Lack of Neutrality in the NANPA is a Real-Time and Continuing Problem

More fundamentally, Lockheed is in violation of the Commission's rules regarding neutrality. In its pursuit of and intended merger with Comsat, it had and continues to have an overwhelming interest in an entity that has a "vested interest in the outcome of ... numbering administration and activities."[9] Comsat provides numerous satellite-delivered telecommunications services that are interconnected with the public switch network. It receives substantial revenue from these telecommunications services. It is a common carrier licensed by the Commission. Its customers need and use numbering resources, the very responsibility NANPA is obligated to administer neutrally and impartially. Lockheed's representation that it fulfilled the neutrality obligations at the time it submitted its proposal during the evaluation process did not end at the time of designation. Once Lockheed commenced its interest in Comsat it violated the neutrality standard. In August 1998, Lockheed promised resolution of the neutrality matter as it related to its Global Telecommunications subsidiary by October 1998.[10] It then announced acquisition of Comsat. Lockheed then represented to the Bureau and the NANC it would formally submit information regarding these serious circumstances on 3 December 1998. As of today, it has failed to do so.

The practical negative impact of Lockheed's conduct is substantial. The Commission's rules require that the NANC monitor the performance of the NANPA on an annual basis.[11] This important element of ensuring that progress be made in enhancing numbering administration must be delayed while the question of Lockheed's neutrality is examined and resolved. Unless the Commission acts to divest Lockheed of its NANPA responsibilities, there can be no assurance that progress will be forthcoming. Any proposed acquiring entity is a new entity, unevaluated by any Commission or NANC standard for suitability to serve as NANPA.

While the Commission and NANC are forced to deal yet again with the neutrality of the NANPA, the publicly-owned numbering resources remains an essential fuel for realizing the competitive marketplace envisioned in the Telecommunications Act of 1996. Numbers are required for new, competitive providers to enter the marketplace. Numbers are required by providers regardless of market or technology segment (e.g., wireline, wireless, terrestrial, satellite, circuit-switched, IP-based). Each competitive firm's number utilization and request data, essential to the effective and efficient administration of the numbering resource, are highly-guarded indicators of their competitive strategy, plans, and well-being. These competitive firms do not provide such numbering resource data to others with whom they currently compete or will compete for customers.

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[9] 47 CFR 52.12(a)(1)(iii)
[10] Lockheed Martin NANPA Report to NANC Re: Neutrality, http://www.fcc.gov/ccb/NANC
[11] 47 CFR 52.11(h)

The neutrality of the NANPA is paramount as the demand for critical numbering resources to satisfy a marketplace, whose competitiveness remains in its infancy, continues to increase. In numbering plan areas (i.e., NPAs, or area codes) where demand for numbering resources increases faster than the NANPA's ability to predict and plan for, otherwise competitive firms are not able to realize business goals and consumers are unable to receive needed telecommunications services. Numbering resource demand has grown so significantly that, according to data included in the most recent Central Office Code Utilization Survey and data posted at the NANPA web site, the number of NPAs in relief planning and the number of Central Office code requests both have increased beyond 120 percent of Lockheed's proposal assumptions. Exceeding 120 percent of proposal assumptions is a significant event in that it allows Lockheed to request a price adjustment[12] to its proposed, fixed price.

Significantly, an additional premise of the Commission's Order designating Lockheed has also been violated. The Order recognized the importance of having several vendors for number administration services. At the time, in addition to seeking to be the NANPA, Lockheed was the administrator in several areas for local number portability. NANC recommended that Lockheed be the administrator in only four out of seven regions.[13] Because of the withdrawal of Perot Systems as a provider of these services in the other three regions, Lockheed is now the administrator in all of the regions. Instead of the Commission and the NANC concern regarding a monopoly provider being a tempering factor, the industry finds itself captive by one provider. Indeed, the industry finds itself captive to one provider who now wishes to become a common carrier.

Conclusion

The Commission's rules serve a fundamental purpose of enhancing the access to communications by the American public and the tangible benefits that accrue. It was the Commission that stated:

> ".... numbers are a public resource, and are not the property of the carriers. Access to numbering resources is critical to entities desiring to participate in the telecommunications industry. Numbers are the means by which the businesses and consumers gain access to, and reap the benefits of, the public switched telephone network."[14]

What the Commission so diligently sought to implement, has now been disrupted to the detriment of the public, by the self-interest of the present NANP Administrator.

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[12] Third Report and Order at para 20

[13] Third Report and Order at para 66 12 FCC Rcd 23075

[14] Third Report and Order at para 4, 12 FCC Rcd 23044

Mitretek urges the Commission to remove Lockheed as the NANPA and designate, as envisioned by the Third Report and Order, Mitretek as its successor.

Copies Provided to:

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