

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

In the Matter of)	
Request of)	
Lockheed Martin Corporation and)	
Warburg, Pincus & Co. for Review of the)	
Transfer of the Lockheed Martin Communications-)	CC Docket 92-237
Industry Service Business from Lockheed)	NSD File No. 98-151
Martin Corporation to an Affiliate of)	
Warburg, Pincus & Co.)	
)	

**COMMENTS OF MITRETEK SYSTEMS
IN RESPONSE TO PUBLIC NOTICE DA 99-117
(RELEASED: JANUARY 7, 1999)**

Mitretek Systems submits this response to the Public Notice released by the Common Carrier Bureau requesting public comment on the December 21, 1998 request (request) of Lockheed Martin IMS Corporation (Lockheed Martin or LMI) for an expeditious review of the transfer of the Lockheed Martin Communications Industry Service (LMI CIS) Business to a new entity, Warburg, Pincus & Co (Warburg). In 1997, LMI IMS was named the North American Numbering Plan Administrator (NANPA).¹ Lockheed Martin IMS's subsidiary, LMI CIS, currently performs NANPA functions on behalf of LMI IMS.

In its request, Lockheed Martin states that its "new strategic plan to marshal and manage its corporate-wide resources and strengths to eventually become a leading

¹ Third Report and Order, Administration of the North American Numbering Plan, 12 FCC Rcd 23040 (released October 9, 1997) (Third Report and Order).

provider of telecommunications services” raises questions about its ability to remain the NANPA under the neutrality standards established by the Commission.² In September 1998, Lockheed Martin announced its intention to acquire COMSAT Corporation (COMSAT), and to seek status as an authorized carrier to purchase stock in COMSAT. COMSAT provides satellite delivered telecommunications services that are interconnected to the public switch network. Its revenues are derived from telecommunications services. It and its customers have a substantial interest in the administration and allocation of numbering resources.

Mitretek opposes the transfer of the NANPA responsibilities to Warburg. By creating a telecommunications services subsidiary, and by aggressively pursuing the acquisition of COMSAT, in addition to other actions, Lockheed has irrevocably violated the standards the Commission established for the NANPA. These standards reflect fundamental principles of not only fairness in the administering number resources, but the law’s and Commission’s rules demand that numbering resources be administered in a manner that is perceived as fair and equitable. The enforcement of the Commission’s policies and regulations are directly challenged by Lockheed Martin’s actions. Sale of the NANPA responsibilities to Warburg not only undermines the Commission’s standards of neutrality, but, based on the limited information submitted, also violates the Commission’s standards. Moreover, the circumstance would embark the Commission on an expanded oversight effort that would divert its resources and creates the perspective that its rules will yield to self-interest and not the public trust responsibilities of the NANPA.

² See In the Matter of the Request of Lockheed Martin Corporation and Warburg, Pincus & Co., for Review of the Transfer of the Lockheed Martin Communications Industry Service Business from

BACKGROUND

The NANPA has the critical duty of administering the North American Numbering Plan, which is the basic numbering scheme permitting interoperable telecommunications service within the United States, Canada, Bermuda and most of the Caribbean.³ The process of designating the new NANPA was the culmination of a multi-year process wherein the Commission pursued, with Congress' specific endorsement, an impartial entity to provide expertise and operational capability to the allocation of numbers in the emerging competitive environment in telecommunications.

On October 9, 1997, Lockheed Martin IMS, a wholly owned subsidiary of Lockheed Martin, was designated by the Commission (Designation Order) to carry out the responsibilities of the NANPA. The selection of Lockheed Martin IMS followed a competition among several entities which was undertaken by the North American Numbering Council (NANC), the advisory committee established by the Commission. The NANC established rigorous criteria and reviewed each applicant's individual merits. Of particular emphasis was the need to disclose any affiliation or association with any telecommunications service provider.⁴ In the Designation Order, the Commission stated that if Lockheed Martin defaulted on its obligations as the NANPA, Mitretek Systems was designated the NANPA to assume the responsibilities for the remainder of the five-year term.⁵

Lockheed Martin Corporation to an Affiliate of Warburg, Pincus & Co., CC Docket No. 92-237, NSD File 98-151 (Dec. 21, 1998) at 10.

³ Third Report and Order.

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

The Commission enumerated several important elements to be adhered to by the NANPA. Foremost was the requirement of an impartial entity to administer telecommunications numbering. The Commission's regulations state that the NANPA shall be a non-government entity that is "impartial and not aligned with any particular telecommunications industry segment."⁶ The Commission also stated that the NANPA may not be an affiliate of any telecommunications service provider, as defined by the law. Affiliate is defined as a person who controls or is controlled by another person. Generally, under the Commission's rules, a person will be "deemed" to control another, if that person has a "threshold" 10% equity interest in the other person.⁷

The Commission's conditions, and therefore, the qualities that must characterize the entity responsible for administering the NANPA, are critical. The NANPA, in order to adhere to the neutrality standard, must not be aligned with any particular telecommunications industry segment nor can it be an affiliate of any telecommunications service provider.

The standards established by the Commission recognize that administering and allocating phone numbers must not only be isolated from bias toward those interests in need of numbering resources, but be beyond reproach, as the responsibilities are fiduciary in nature. The fidelity of such a responsibility lies with the public and not any particular industry interest. As an example of the need for high standards in fulfilling the obligations, the NANPA possesses, or has direct access to, market sensitive information that bears

⁵ Third Report and Order at para 67. For a full discussion of the process leading to the designation of Lockheed Martin LMS, see letter of H. Gilbert Miller, Vice President, Center for Telecommunications and Advanced Technology, Mitretek Systems, to Lawrence E. Strickling, Chief, Common Carrier Bureau, Federal Communications Commission, December 8, 1998.

⁶ 47 CFR 57. 12.

directly on the future of not only those entities offering telecommunications services, but suppliers and services providers throughout the telecommunications industry.

The Commission was succinct in stating that the NANPA responsibility came with significant obligations, obligations not normally accompanying a private enterprise:

... numbers are a public resource, and 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.⁸

Lockheed Martin's Actions Constitute Default of the Commission's Standard of Neutrality

Any common understanding of “default” leads to a conclusion that Lockheed Martin has defaulted. At some point prior to, or shortly after its designation, Lockheed Martin initiated what it characterized as marshalling its corporate wide resources and strengths to become “a leading provider of telecommunications services.”⁹ Once it embarked upon such an effort, it became inextricably aligned with a segment of the telecommunications industry in violation of the Commission’s rules. As the Commission rules recognize, there is no element of the telecommunications industry whose access to, and ability to profit from, does not have a direct tangible relation to the North American public switch network, and the numbering resources that are critical to its efficient operation.

Beyond establishing the Global Telecommunications subsidiary, Lockheed Martin took other actions calling into question its neutrality. Through its pursuit and proposed

⁷ 47 CFR 52.12(a)(i).

⁸ Third Report and Order at para 4, 12 FCC Rcd 23044.

⁹ Request at 10.

acquisition of COMSAT, it demonstrated a significant and tangible bias toward an entity with extensive interests in the numbering process.

Lockheed Martin has commenced a relationship with Nortel, a major provider of telecommunications equipment. On September 23, 1998, the two companies announced an agreement to market joint solutions to the satellite and terrestrial communications market. The two companies plan to work together to address specific market opportunities for satellite-based underserved telephony, regional and global mobile satellite networks, and broadband satellite and terrestrial multimedial system.¹⁰

Lockheed Martin appears to assert that as long as it has not acquired any interest in COMSAT, it has not breached the Commission's neutrality standards. This premise ignores several elements of the Commission's rules. The first is that by initiating its telecommunications services strategic plan, by creating its Global Telecommunications subsidiary, as well as other actions, it became aligned with a segment of the telecommunications industry. It is clear that Lockheed Martin did more than plan, did more than review opportunities in the telecommunications industry. It commenced an aggressive public crusade to become a global provider of telecommunications services.

Second, Lockheed Martin states that because it has not yet acquired COMSAT, it has not violated the neutrality standard.¹¹ This position ignores the reality that it has a fundamental financial and overall business interest in COMSAT's well being. COMSAT's continued viability is a major part of its new telecommunications plan. Lockheed Martin has made clear to the investment community how critical COMSAT is to the plan.¹² It is

¹⁰ See Press Release of September 23, 1998 by Nortel Networks. www.nortel.com.

¹¹ Request at 7, FN 9.

¹² Press Release "Lockheed Martin-COMSAT to Combine" September 20, 1998. www.LMCO.com.

self-evident that adverse circumstances effecting one merging partner will accrue to the detriment of the other partner, even if only to terminate the transaction, with the resulting lost opportunity costs.

Lockheed Martin has demonstrated its interest, and commitment to COMSAT, through its advocacy before the Commission. In IB Docket 98-192, the Commission proposed that companies other than COMSAT be permitted to contract for capacity directly from Intelstat, the international satellite system, of which COMSAT is presently the sole U.S. signatory and equity investor. COMSAT controls interexchange carrier access to Intelstat facilities. COMSAT opposes the Commission's proposal. Lockheed Martin has advocated that it too opposes allowing direct access.¹³ More than demonstrating its interest in COMSAT maintaining its control over access to Intelstat, Lockheed Martin also shows its alignment with, and self-interest in, important segments of the telecommunications industry.

¹³ Comments of Lockheed Martin, Notice of Proposed Rulemaking, IB Docket 98-192 (October 22, 1998).

Lockheed Martin contends that it has not yet acquired any interest in COMSAT so that COMSAT cannot be “deemed” to be an affiliate. The Commission’s rules do not ignore reality. The affiliate standard articulates those circumstances where the interest is so clear as not to require review of the relationship. While Lockheed Martin’s interest in COMSAT may not be deemed to be an affiliate, it has a clear and tangible interest in COMSAT that violates the neutrality standards of the Commission’s rules.

Lockheed Martin seemingly construes the neutrality standard as requiring an act evidencing self-dealing. Lockheed Martin would construe and confine the Commission’s rules, not only so that there is no violation unless the affiliation threshold is reached, but that self-dealing or other impropriety must be demonstrated and proven. The policies and rules of the Commission cannot be so easily circumvented.

What pervades the Lockheed Martin position is that appearances do not matter, that conduct which has the owner of the entity entrusted with the NANPA responsibilities commencing and pursuing the role of, in its own words “a leading provider of telecommunications services” is irrelevant to the Commission’s standards. The Commission’s rules serve the fundamental purpose of enhancing the access to communications by the American public and the benefits that accrue. What the Commission so diligently sought to implement, a fair and equitable administrator of the North American Numbering Plan, distant from the very industry that needs the resources it allocates, has now been disrupted to the detriment of the public by the overwhelming self-interest of the present NANP Administrator.

Notably, Lockheed Martin actions have overshadowed that an additional premise encompassed in the Commission’s Designation Order has been compromised. The

Designation Order recognized the importance of having several entities compete for number administration services. At the time, in addition to seeking the NANPA responsibilities, Lockheed Martin was the administrator in several areas for local number portability (LNPA) responsibilities. The NANC recommended that Lockheed Martin be the administrator in only four out of seven regions so that those in need of this service would have choice.¹⁴ Because of the withdrawal of Perot Systems as a provider of these services, Lockheed Martin is now the only LNPA administrator. Instead of the Commission and the NANC intention to avoid a monopoly environment, the industry and the public find itself captive by one provider, an ironic circumstance for an era where telecommunications markets are under statutory directive to move toward competition.

Any contention that Lockheed Martin may cure its neutrality violations by divesting, or promising to divest, its NANPA responsibilities falls far short of the obligations it was entrusted with. The Commission, when it commenced the proceeding in 1995¹⁵ as well as in the Designation Order,¹⁶ made clear how important it is to the industry and public that its standards be adhered to. Short of refusing to carry out the NANPA responsibilities, it is difficult to perceive how the Commission's standards can be violated to this degree without constituting default.

¹⁴ Third Report and Order at para 66, 12 FCC Rcd 23075.

¹⁵ Administration of the North American Numbering Plan, Report and Order, CC Docket No. 92-237, 11 FCC Rcd 2588, 2590 (1995).

¹⁶ Third Report and Order at para 4-5.

Acquisition by Warburg Pincus & Co. Violates the Commission's Standards and Places the Commission in a Constant Oversight Role of the NANPA

Warburg describes itself as a manager of five private equity funds with approximately \$6 billion invested in more than 100 portfolio companies, with approximately \$5 billion available for new investment from Warburg, Pincus Equity Partners, L.P., an equity fund operated by Warburg as general partner. Warburg states that it relies on carefully selected management teams for day-to-day operations of the businesses in its portfolios.¹⁷

Warburg describes telecommunications investments it holds where the interests exceed the 10% ownership threshold.¹⁸ It also relates an interest, that it does not disclose, where it owns greater than 5% but less than 10%.¹⁹ There are other holdings, perhaps of some substantial amount, which are not disclosed, but assurance is given that none approach a 10% interest in the entity. As to future investments, Warburg states that appropriate information barriers will be instituted. It also states that it will adopt the CIS code of conduct as well as adhere to several conditions ensuring CIS' independence. Warburg also states that it will conduct audits of its adherence to and performance relative to the neutrality provisions.²⁰ It also states that it will report investments in

¹⁷ Request at 5.

¹⁸ Request at 16-19.

¹⁹ Request at 15.

²⁰ Request at 20.

excess of the threshold to the FCC and discuss with the Commission appropriate information barriers and safeguards to preserve the service levels and neutrality of the NANPA.²¹

Warburg's proposals raise several matters. The first is its "passive" approach to its investment. While there are various means and degrees to manage an entity, the owners, or those representing the owners, are responsible for the carrying out the company's business. Attempting to distance the ownership from the daily operations of the undertaking as some means to assure neutrality contradicts the premise that ownership or its representatives will intervene when the enterprise follows a course not to its satisfaction. Notably, Warburg's approach is inconsistent with the Commission's view of what it envisioned of Lockheed Martin's overall corporate role—that it would not risk a range of commercially valuable opportunities through poor performance in this critical and public arena.²²

More significantly, it appears that Warburg is justifying departing from the Commission's threshold standards, as well as the requirement that it avoid being aligned with any particular telecommunications industry segment, by its management philosophy. The Commission's rules provide no such exemption.

Additionally, Warburg's reaction to exceeding the threshold standard of 10% is to impose information barriers, and promise to adhere to a code of conduct and certain principles. Again, this is not what the Commission's regulations require. Like Lockheed Martin, Warburg appears not to accept the NANPA obligations as the Commission

²¹ Request at 20.

²² Third Report and Order at para 61.

promulgated them, but to take the NANPA duties and amend the fiduciary responsibilities to fit its circumstances.

In those companies where Warburg is essentially asking for a waiver of the threshold requirement, its attempts to reassure raise only questions. One of the companies is Covad Communications Company (Covad). The request does not convey the extent of Warburg's holdings. The request states that Covad does not operate as a common carrier service provider and does not use numbering resources.

A review of publicly available information relating to Covad indicates that the Commission's standards would be violated if Warburg assumes the NANPA responsibilities. Notably two individuals associated with Warburg hold seats on the Board of Directors of Covad.²³ Covad describes itself as a "packet" Competitive Local Exchange Carrier (CLEC) authorized by Public Utilities Commissions to provide services over existing telephone lines as an alternative to the incumbent local exchange carrier. It states that it depends upon strategic third parties to market and resell its services. It has announced strategic alliances with Qwest, AT&T, and NEXTLINK, with all three entities obtaining an equity interest in Covad. Covad heralds its advocacy before the Commission and the courts in pursuing access to incumbent local exchange carrier facilities.²⁴

Covad is no disinterested entity in the administration of numbering resources. Clearly its customers and partners actually use numbers. Just as important, the

²³ Henry Kressel of E.M. Warburg, Pincus and Co., LLC and Joe Landy of Pincus and Co., LLC are listed as members of the eight person Board of Directors of Covad. www.covad.com.

²⁴ www.covad.com.

information possessed by the NANPA relates directly to the numbering demands of Covad's customers and competitors. The purpose of the Commission's rules was to ensure that the NANPA had no self-interest in such information.

Warburg's discussion of its Primus interests is contradictory. It states that a significant majority of Primus' service is offered in markets outside of the United States. One significant market enumerated is Canada. Canada is part of the North American Numbering Plan. The NANPA has an obligation to establish and maintain relationships with government numbering agencies in the United States, Canada and the Caribbean. Moreover, media reports indicate that Primus' interest extend to the United States and markets covered by the North American Numbering Plan.²⁵

In a submission to the NANC, Warburg states that it does not control the Warburg Pincus Global Telecommunications Mutual Fund,²⁶ yet it markets the fund. Warburg has an interest in its success. Notably, the Warburg Pincus name in this context recently received prominence in assessing the investment potential for major telecommunications service providers, including the largest long distance carriers, regional Bell operating companies, and wireless providers.²⁷ Yet Warburg appears to ignore how this reflects on the NANPA.

²⁵ The New York Times archives of April 18, 1998, Business/Financial Desk reported the following: Primus Telecommunications Group, Inc. said yesterday that it had increased its takeover bid for a rival international phone company, Trescom International Inc., to \$155 million to \$122 million.In exchange for the higher bid, Primus will receive stock options from Warburg Pincus Investors L.P. , which owns about 51% of Trescom's shares, as well certain Trescom officers, allowing Primus to acquire more than 50% of Trescom's shares if the merger is not completed. Trescom, based in Fort Lauderdale, Fla. provides international long-distance calls that originate in the United States. Primus, based in McLean, Va., and also a long distance phone company, said the acquisition would help it enter the Caribbean and Latin American markets.

²⁶ Letter of Dr. Henry Kressel, Managing Director, E. M. Warburg, Pincus & Co., LLC, to Mr. Alan Hasselwander, Chairman, North American Numbering Council (January 19, 1999).

²⁷ New York Times, Money and Business, "Surrounded by Rivals" January 17, 1999 at 13.

The other holding referenced in the request is not identified, yet assurance is given that appropriate information barriers are in place to preclude information being passed among and between Warburg entities.

Similarly, Warburg does not disclose all its telecommunications holdings. It is unclear what portion of its holdings it has disclosed. No representations are made with regard to its future investments. Of those disclosed, the clear standards of the Commission's rules have been violated. Warburg takes refuge either by pleading that the entities are not really telecommunications service providers interested in numbers, ignoring that this is not the standard, or that its distant management oversight is all that is necessary. The Commission's rules do not represent flexible molds meant to accommodate a range of circumstances that the self-interest of the NANPA owner dictate.

Moreover, Warburg proposals for information barriers, safeguards, discussions, and audits impose upon the Commission, and the NANC, a substantial additional resource demand that will require constant review and decision, contrary to the purpose of the NANPA. These will divert the Commission's limited resource base. The Commission was specific in terms of what it demanded of the entity entrusted with the NANPA responsibilities. Those conditions must be adhered to, not amended for the convenience of the private interest. Warburg fails as an entity to succeed as the North American Numbering Plan Administrator.

Questions

In the Public Notice, the Commission requested that questions for the parties be submitted to ensure that a complete record be established to consider the request. Mitretek Systems submits the following specific questions for consideration by the

Commission as it addresses the continued administration of the North American Numbering Plan. These specific questions supplement the questions and issues enumerated in the preceding discussion. The questions are premised on the Public Notice's recognition that the NANPA is a critical and essential public resource. Mitretek endorses the view of the Public Notice that the extensive work that culminated in the Designation Order in October 1997 must not be lost, and that review of the request is just as critical as the original designation. The questions address three vital objectives:

1. Ensure that the record is clear as to the specific parties involved in the proposed sale of LMI CIS, and that the record is clear as to who is the legal and responsible person to speak for and commit the individual parties to this transaction.
2. Ensure that the record contains sufficient substantive and detailed information to allow the Commission, and public commentors, to consider the proposed sale of LMI CIS.
3. Suggest questions and issues for the Commission to exercise appropriate due diligence in the consideration and decision of the proposed sale of LMI CIS.

It is imperative for the record to state the specific parties involved in the proposed sale of LMI CIS, and that the record be clear as to who is the legal and responsible person to speak for and commit the individual parties to this transaction. The parties to the proposed financial transaction, which include at a minimum Lockheed Martin, LMI IMS, LMI CIS, the CIS Acquisition Corporation, Warburg, Pincus Equity Partners, L.P., and Warburg, Pincus & Co., each have different and vested interests in the resolution of this matter. For example, Lockheed Martin clearly recognizes the need to resolve this NANPA neutrality matter and the relationship to its acquisition of COMSAT. However, since Lockheed Martin is proposed as a future 5% owner of the CIS Acquisition Corporation, it is not appropriate for Lockheed Martin to make future commitments.

Rather, Warburg, Pincus Equity Partners, L.P., the 95% owners should make future commitments.

Similarly, informal written comments and verbal responses to the NANC and the Commission have at times blurred the distinction between the parties. For example, at a recent teleconference conducted by the NANC, a member of the NANC asked if Lockheed Martin was interested separating the NANPA functions from those of the local number portability administrators. The response to that question came from the proposed chief executive of the CIS Acquisition Corporation. It is imperative that the record clearly show the position of each party.

As stated previously, the Commission's Designation Order followed a considered and in-depth evaluation of all submitted proposals including the LMI IMS proposal, after recommendation from the NANC, and after receipt of comments from interested industry and public parties. The NANC made its recommendation after its own extensive evaluation of all submitted proposals including the LMI IMS proposal, and after consideration of the recommendation of the NANC's NANPA Working Group. The NANPA Working Group, consisting of the industry's numbering experts, made its recommendation after its independent evaluation of all submitted proposals including the LMI IMS proposal, as well as oral presentations of from those organizations making proposals. Interested industry and public commenters had access to the complete record, including the NANC reports and a redacted version of all proposals including the LMI IMS proposal. Overall, the 1997 decision was based on a public review of the detailed proposals, including the one from LMI IMS, responding to the thorough and substantive requirements set forth in the NANC's Requirements Document.

Given the LMI IMS' proposed "cure" is to sell its NANPA capability to a third party, and given that once the sale is final LMI IMS will not be able to perform the NANPA function as proposed in its 1997 proposal, it is appropriate that the record contain detailed and substantive information describing how the new entity and its owners will meet the NANPA requirements as enumerated in the NANC's Requirements Document.

The change of the appointed NANPA under the Commission's rules is unprecedented. The closest analogy is that of contract assignment in the private sector and contract novation in the public sector. The assignment, or novation, of a contract to a new entity is a serious matter requiring an appropriate level of due diligence by the unchanging party to the contract. In the public sector, the Federal Acquisition Regulations encompass the appropriate due diligence requirement. Similarly, in the private sector, due diligence is the foundation of any sale of assets.

Mitretek urges that the formal structured process that led to the Designation Order, as well as that which accompanies a contract assignment or novation, where representations and certifications are the standard, be adhered to. The need for accountability is critical. The questions are organized by the three objectives noted.

Questions suggested to ensure that the record is clear as to the specific parties involved in the proposed sale of LMI CIS, and who is the legal and responsible person to speak for and commit the individual parties to this transaction:

1. Please confirm that LMI IMS was named as the NANPA in the Third Report and Order.
2. Please confirm that LMI IMS is currently a wholly owned subsidiary of Lockheed Martin. If it is not, who owns LMI IMS?
3. Who is able to legally speak for and commit Lockheed Martin in consideration of the proposed transaction?

4. Who is able to legally speak for and commit LMI IMS in consideration of the proposed transaction?
5. Please confirm that LMI CIS is currently a wholly owned subsidiary of LMI IMS. If it is not, who owns LMI CIS?
6. Who is able to legally speak for and commit LMI CIS in consideration of the proposed transaction?
7. Please confirm that Warburg, Pincus & Co. is the general partner of Warburg, Pincus Equity Partners, L.P.
8. Who is able to legally speak for and commit Warburg, Pincus & Co. in consideration of the proposed transaction?
9. Who are the other partners of Warburg, Pincus Equity Partners, L.P. and what are their respective shares in the organization?
10. Who is able to legally speak for and commit Warburg, Pincus Equity Partners, L.P. in consideration of the proposed transaction?
11. Please confirm that CIS Acquisition Corporation will be owned by Warburg, Pincus Equity Partners, L.P., on a 95% basis, and Lockheed Martin, on a 5% basis. Please confirm that these percentages are correct. If not, please provide the percentages. Please confirm that there are no other owners of CIS Acquisition Corporation.
12. Who is able to legally speak for and commit CIS Acquisition Corporation in consideration of the proposed transaction?

Questions suggested to ensure that the record contains sufficient substantive and detailed information to allow the Commission, and public commentors, to consider the proposed sale of LMI CIS:

13. Please provide a proposal for how the CIS Acquisition Corporation, and its owners Warburg, Pincus Equity Partners, L.P., plan to meet the requirements enumerated in the NANC's Requirements Document.
14. Alternatively, provide all changes to the 1997 LMI IMS proposal necessary for the proposed sale to Warburg, Pincus Equity Partners, L.P. Specifically, show the proposal without the participation of Lockheed Martin or LMI IMS, but rather with the participation of Warburg, Pincus Equity Partners, L.P.
15. Provide the Transaction Agreement and other such documents between the parties enumerated above relevant to the NANPA.
16. The 1997 LMI IMS proposal included the latest Annual Report for Lockheed Martin. Please provide the latest Annual Report for CIS Acquisition Corporation. In the absence of an Annual Report for the CIS Acquisition Corporation, provide appropriate financial data of CIS Acquisition Corporation and Warburg, Pincus Equity Partners, L.P.

Questions and issues suggested for the Commission to exercise appropriate due diligence in the consideration and decision of the proposed sale of LMI CIS:

17. Request Warburg, Pincus Equity Partners, L.P. to confirm the Lockheed Martin statement that “Warburg intend that CIS [will] have access to the resources it needs to fulfill its existing commitment and to grow and develop.”
18. Specify what growth and development is required in order for the NANPA to meet its commitments under the current NANPA rules and appointment (i.e., what commitments under the current rules cannot be met without additional growth and development).
19. Request that Warburg, Pincus Equity Partners, L.P. define its financial expectations for the CIS Acquisition Corporation to grow and develop.
20. What is the estimated value of the Warburg, Pincus Equity Partners, L.P. acquisition in the CIS Acquisition Corporation?
21. What is the expected return on the Warburg, Pincus Equity Partners, L.P. investment in the CIS Acquisition Corporation as a function of year?
22. What business growth is required of the CIS Acquisition Corporation to meet these goals?
23. What is the minimum level of performance relative to these goals that Warburg, Pincus Equity Partners, L.P. is willing to tolerate before backing out of its investment in the CIS Acquisition Corporation?
24. Please provide an organizational chart showing all personnel between the designated CIS Acquisition Corporation Chief Executive Officer and the NANPA Director.
25. Which of the individuals between and including the CIS Acquisition Corporation Chief Executive Officer and the NANPA Director will have responsibilities for further developing the CIS Acquisition Corporation business base? What portion of the enumerated individuals’ compensation results from expansion of CIS Acquisition Corporation?
26. Why will Lockheed Martin remain a 5% owner of CIS Acquisition Corporation?
27. Given that the Transaction Agreement is structured so that the CIS Acquisition Corporation “stands in the shoes of its predecessor” and given that the redacted copy of the 1997 LMI NANPA proposal clearly emphasized the Lockheed Martin Corporation’s technology strength, experience, systems support, and personnel resource pool, please describe the similar technology strength, experience, systems support, and personnel resource pool residing in Warburg, Pincus Equity Partners, L.P.
28. Demonstrate how the CIS Acquisition Corporation is adequately capitalized.
29. Confirm that the CIS Acquisition Corporation agrees to perform the NANPA functions at the prices contained in the 1997 LMI IMS NANPA proposal.
30. Confirm that the CIS Acquisition Corporation does not plan to raise the price under the current 120% terms in the FCC NANPA rules.
31. Confirm that the CIS Acquisition Corporation’s business plan, or the business plan agreed to by Warburg, Pincus Equity Partners, L.P., does not include a price increase for the NANPA functions.

32. Provide the current levels of CO code requests, NPAs in relief planning, and number of NPA relief planning meetings being attended to set a new baseline for the 120% rule.
33. Confirm that the number of NPAs in relief planning reflect the COCUS identified NPA exhaust dates, as well as the industry guidelines for the required time for NPA relief planning?
34. Are all of the assets required to perform the current NANPA functions assets owned by LMI CIS?
35. Are there any contracts for the lease of assets, or for the performance of direct or support services, as related to the NANPA?
36. Enumerate support services provided by Lockheed Martin, outside of LMI CIS.
37. Who provides the information systems and business infrastructure (e.g., email, PBX, web site maintenance, payroll) for the LMI CIS NANPA organization? Confirm that these support services and associated assets be transferred to the CIS Acquisition Corporation?
38. Enumerate all of the telecommunications-related holding of Warburg, Pincus Equity Partners, L.P., Warburg, Pincus & Co., and all other partners in Warburg, Pincus Equity Partners, L.P. Provide the percent ownership in the holding. For example, provide the percent share of ownership that Warburg, Pincus Equity Partners, L.P., has in Covad.
39. Provide the Code of Conduct under which the CIS Acquisition Corporation and Warburg have agreed to operate.
40. Does this Code of Conduct address both the corporate and executive/employee behaviors and holdings that will be allowed and required to be disclosed?
41. Given that the CIS Acquisition Corporation has proposed to conduct at its expense “audits of its adherence to and performance relative to the neutrality requirements of the industry”, what is the proposed role of the NANC and the Commission in reviewing and enforcing the neutrality requirements? Does Lockheed Martin, the CIS Acquisition Corporation, or Warburg, Pincus Equity Partners, L.P. propose a changed role for the NANC and the FCC in ensuring the neutrality rules are met. Who will conduct this neutrality audit? Will the neutral audit conductor have complete access to the financial data of the CIS Acquisition Corporation, Warburg, Pincus Equity Partners, L.P., and Warburg, Pincus & Co., as well as any other partners of Warburg, Pincus Equity Partners, L.P.?
42. Enumerate the “certain additional conditions that Warburg has agreed to in order to ensure the continued success of CIS regardless of the telecommunications interested of its parent company.” Enumerate the specific constraints on new areas of business, investment, as well as constraints on new clients and partners, that the CIS Acquisition Corporation, Warburg, Pincus Equity Partners, L.P., and Warburg, Pincus & Co. agree to adhere to in order to ensure the neutrality of the NANPA. Please state why these new additional conditions are required in order to meet the current neutrality rules.
43. Given that Lockheed Martin has stated that “any future investment by Warburg’s private equity funds in telecommunications service providers, that meet the NANPA affiliation thresholds, would be the subject of discussions between Warburg and the

Commission as to appropriate informational barriers, safeguards or other alternatives to preserve the service levels and neutrality of the CIS business”, please state why Warburg would be willing to consider future investments that would require discussions with the Commission related to neutrality. Please confirm that the neutrality of the CIS Acquisition Corporation, like the current LMI CIS unit, will be dependent on the future business investment and activities of the parent company.

44. Are there any assets of LMI CIS that will not be bought by Warburg, Pincus Equity Partners, L.P.?

There are also a series of inquiries that will inform the Commission and the public more particularly of the neutrality circumstances relation to Lockheed Martin and Warburg:

46. When did Lockheed Martin determine to become “a leading provider of telecommunications services” and what actions has it taken to pursue that goal?
47. When was Lockheed Martin’s subsidiary Global Telecommunications established and what are its market goals?
48. What acquisitions has Lockheed Martin pursued, when did these efforts commence and when was the Commission advised of these actions?
49. When did Lockheed Martin determine it was necessary to notify the Commission that its telecommunications subsidiary raised neutrality issues?
50. When did the pursuit of COMSAT commence?
51. In what proceedings, at the FCC or elsewhere, has Lockheed Martin advocated positions consistent with those of COMSAT? What other actions has Lockheed Martin taken consistent with COMSAT's?
52. Describe the relationship with Nortel to market “joint solutions to the satellite and terrestrial communications markets.” When did Lockheed Martin commence discussions with Nortel that culminated in its joint agreement? What product and geographic markets are involved?
53. What other telecommunications entities has Lockheed Martin pursued for purposes of entering into relationships short of acquisition?
54. Who holds the ownership interest in the Warburg Pincus Global Telecommunications Fund? What is Warburg’s interest? What are the fund’s holdings?
55. Warburg states that it owns approximately 12% of Espirit Telecom Group plc but that Espirit is being acquired by Global Telesystems Group, Inc.. Who holds the ownership interests of Global Telesystems Group, Inc.? Does Warburg have any relationship to Global Telesystems Group, Inc.? Does Lockheed Martin hold any interest in Global Telesystems Group, Inc.? When is the transaction scheduled to close?
56. Explain how Primus operations in Canada do not raise neutrality issues and expand on media reports identifying Primus as a long distance carrier seeking to enter the Caribbean market.
57. Explain Warburg’s and Primus’ relationship to Trescom. Does Trescom provide long distance calls that originate in the United States?
58. What are Lockheed Martin’s and Warburg’s intentions if CIS’s responsibility is limited to Local Number Portability Administration?

59. Given that Dr. Henry Kressel and Mr. Joe Landy, both of EM Warburg, Pincus & Co., LLC serve on the board of directors of Covad, disclose all other boards on which Warburg and CIS Acquisition Corporation executives and employees serve.
60. What interest does Warburg hold in Lockheed Martin or COMSAT? What interest will it have subsequent to the Lockheed Martin/COMSAT transaction?

Summary

In its request, Lockheed Martin dismissed Mitretek's position as misunderstanding the Commission's rules and policies. It asserts that Lockheed Martin has not defaulted on its obligations. The circumstances are clear that it has defaulted on its obligations and that the provisions of the Commission's Designation Order should be invoked. Mitretek should be designated the North American Numbering Administrator.

What is at stake is more important than which entity is entrusted with the NANPA responsibility. The Commission established standards for the NANPA to adhere to. Slightly more than one year after it designated a new administrator, after a process that commenced in 1995, the Commission is faced with a substantial breach of its policies and rules that do much to ensure and promote fair and equitable administration of numbering and the movement toward competitive markets. The proposed successor creates even more challenges to the Commission's rules. The Commission must act to demonstrate that its rules are meaningful and will be enforced.

January 22, 1999

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Comments of Mitretek Systems was sent via First Class Mail, United States Postal Service, on January 22, 1999 to the following:

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