

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 Industry Services)
Business)

CC Docket No. 92-237
NSD File No. 98-151

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ORDER

Adopted: November 12, 1999

Released: November 17, 1999

By the Commission: Commissioner Furchtgott-Roth dissenting and issuing a statement.

I. INTRODUCTION

1. On August 17, 1999, Lockheed Martin IMS Corporation (Lockheed) and Warburg, Pincus & Co. (Warburg) filed an Amended Request for Expeditious Review of the proposed transfer of Lockheed's Communications Industry Services (CIS) business unit to an affiliate of Warburg.¹ The affiliate would be called NeuStar, Inc. (NeuStar), the majority of whose shares would be owned by Warburg, Pincus Equity Partners (WPEP), a private equity investment firm.² Lockheed/CIS currently serves as the North American Numbering Plan

¹ In the Matter of Request of Lockheed Martin Corporation and Warburg, Pincus & Co. for Review of the Transfer of the Lockheed Martin Communications Industry Services Business from Lockheed Martin Corporation to an Affiliate of Warburg, Pincus & Co., Amended Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Service Business, NSD File No. 98-151 (Aug. 17, 1999) (Amended Request). *See also* Supplemental Amended Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Service Business, NSD File No. 98-151 (Aug. 27, 1999) (Supplemental Amended Request). The Amended Request and Supplemental Amended Request replace the parties' December 21, 1998 initial filing. *See* In the Matter of Request of Lockheed Martin Corporation and Warburg, Pincus & Co. for Review of the Transfer of the Lockheed Martin Communications Industry Services Business from Lockheed Martin Corporation to an Affiliate of Warburg, Pincus & Co., Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Service Business, NSD File No. 98-151 (Dec. 21, 1998) (Request).

² WPEP is an affiliate of Warburg. Request at 5. Warburg, Pincus & Co. is registered as a New York general partnership and is the general partner of E.M. Warburg, Pincus & Co., LLC, a New York limited liability company. E.M. Warburg, Pincus & Co., LLC, is registered with the Securities and Exchange Commission (SEC) as a registered investment adviser under the Investment Advisers Act of 1940. Lockheed Martin IMS Response to Questions and Issues Regarding Transfer of the Lockheed Martin Communications Industry Services

Administrator (NANPA).³ In this Order, we review the proposed transfer to determine whether it is consistent with our rules. We conclude that Lockheed must obtain our prior approval before transferring the NANPA functions. We further find that Lockheed currently is in violation of our neutrality requirements, but may cure its violation by transferring the NANPA functions to an entity that meets the neutrality requirements. Finally, we find that NeuStar, as currently structured and with the additional safeguards imposed herein, is in compliance with our neutrality criteria. Thus, we approve the transfer of the NANPA functions to NeuStar, subject to the terms and conditions enumerated herein, for the remainder of the current appointment term.

II. BACKGROUND

2. Section 251(e) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996,⁴ requires the Commission to designate an impartial numbering administrator to make telecommunications numbers available on an equitable basis.⁵ The Commission established the North American Numbering Council (NANC) on July 13, 1995, pursuant to the Federal Advisory Committee Act (FACA),⁶ for the purpose of advising the Commission on policy matters relating to administration of the North American Numbering Plan (NANP).⁷ The *NANP Order* directed the NANC to recommend to the Commission, and to other NANP member countries, a neutral entity that is not aligned with any particular industry segment to serve as the NANPA.⁸ On February 20, 1997, the NANC issued a "Requirements Document," which set forth the desired qualities and attributes of the

Business, CC Docket No. 92-237, NSD File No. 98-151 (filed Feb. 16, 1999) (Lockheed Response) at 4-5.

³ In the Matter of Administration of the North American Numbering Plan and Toll Free Service Access Codes, *Third Report and Order and Third Report and Order*, 12 FCC Rcd 23040, 23042 (1997) (*NANP Administration Third Report and Order*).

⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

⁵ 47 U.S.C. § 251(e).

⁶ 5 U.S.C., App. 2.

⁷ Administration of the North American Numbering Plan, *Report and Order*, CC Docket No. 92-237, 11 FCC Rcd 2588, 2608 (1995) (*NANP Order*). The NANP is the basic numbering scheme for telecommunications networks located in Anguilla, Antigua, Bahamas, Bermuda, British Virgin Islands, Canada, Cayman Islands, Dominica, Dominican Republic, Grenada, Jamaica, Montserrat, St. Kitts & Nevis, St. Lucia, St. Vincent, Turks & Caicos Islands, Trinidad & Tobago, and the United States (including Puerto Rico, the U.S. Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands).

⁸ *NANP Order*, 11 FCC Rcd at 2609, 2616. See also 47 U.S.C. § 251(e); 47 C.F.R. § 52.13(b).

NANPA and the functions that it would be expected to perform.⁹ In addition to requiring particular technical capabilities, the Requirements Document included specific criteria to ensure the neutrality of the NANPA. On May 15, 1997, after evaluating bids from five interested parties, the NANC submitted to the Commission its recommendation that Lockheed be appointed to serve as the NANPA.¹⁰

3. The Commission set forth its criteria for the selection of the NANPA in the *NANP Order*.¹¹ The Commission found that it would be very difficult, if not impossible, for a NANPA closely associated with a particular segment of the telecommunications industry to be impartial, and that even if such an entity were impartial, there would still likely be the perception and allegations that it was not, as a result of such an affiliation.¹² Therefore, the NANPA must be a "non-governmental entity that is not aligned with any particular telecommunications industry segment."¹³ Furthermore, the specific neutrality criteria in the Requirements Document and the *NANP Administration Third Report and Order* establish that: 1) the NANPA may not be an affiliate¹⁴ of any telecommunications service provider as

⁹ February 20, 1997 NANP Administration Requirements Document (Requirements Document) at § 1.2. See NEWS Report No. CC 97-8, NANC Seeks Proposals from the Entities Interested in Serving as North American Numbering Plan Administrator (Feb. 20, 1997).

¹⁰ Recommendation of the North American Numbering Council, North American Numbering Plan Administrator and Billing and Collection Agent (May 15, 1997) (May 15, 1997, NANC Recommendation).

¹¹ *NANP Order*, 11 FCC Rcd 2613.

¹² *NANP Order*, 11 FCC Rcd 2613.

¹³ *NANP Order*, 11 FCC Rcd 2609. See also 47 C.F.R. § 52.12(a)(1); Requirements Document at § 1.2.

¹⁴ "Affiliate" is defined as a person who controls, is controlled by, or is under the direct or indirect common control with another person. A person shall be deemed to control another if such person possesses, directly or indirectly, (i) an equity interest by stock, partnership (general or limited) interest, joint venture participation, or member interest in the other person ten percent (10%) or more of the total outstanding equity interests in the other person, or (ii) the power to vote ten percent (10%) or more of the securities (by stock, partnership (general or limited) interest, joint venture participation, or member interest) having ordinary voting power for the election of directors, general partner, or management of such other person; or (iii) the power to direct or cause the direction of the management and policies of such other person, whether through the ownership of or right to vote voting rights attributable to the stock, partnership (general or limited) interest, joint venture participation, or member interest of such other person, by contract (including but not limited to stockholder agreement partnership (general or limited) agreement, joint venture agreement, or operating agreement), or otherwise. 47 C.F.R. § 52.12(a)(1)(i); Requirements Document at § 1.2; see also *NANP Administration Third Report and Order*, 12 FCC Rcd 23076.

defined in the 1996 Act;¹⁵ 2) the NANPA and any affiliate may not issue a majority of its debt to, nor derive a majority of its revenues from any telecommunications service provider;¹⁶ and 3) notwithstanding the neutrality criteria set forth in 1) and 2) above, the NANPA may be determined to be or not to be subject to undue influence by parties with a vested interest in the outcome of numbering administration and activities.¹⁷

4. Applying these criteria, and following an independent evaluation and consideration of the NANC's recommendation, the Commission selected Lockheed as the NANPA, subject to conditions outlined in the order, to govern the activities of the NANPA.¹⁸ In evaluating Lockheed's bid and the NANC's evaluation thereof, the Commission addressed questions that had been raised about Lockheed's neutrality based on certain telecommunications interests it owned.¹⁹ In particular, the Commission concluded that Lockheed was an affiliate of a telecommunications service provider, Loral SKYNET, because of its 16 percent ownership of Loral SpaceCom Corporation (Loral).²⁰ Based on the observation that Lockheed's financial stake in Loral SKYNET was extremely small relative to Lockheed's overall assets, and the finding, under section 52.12(a)(1)(iii), that Lockheed would not be subject to undue influence by parties with a vested interest in the outcome of numbering administration as a consequence of its interest in Loral SKYNET, the Commission thereby determined that Lockheed "may serve as the NANPA without compromising the purposes of the statute and the resulting neutrality criteria."²¹

¹⁵ In the *NANP Administration Third Report and Order*, the Commission concluded, based on precedent analyzing the meaning of the term common carrier, that an entity is a telecommunications service provider if it has been authorized to offer services indiscriminately to the public, and is, therefore, providing services on a common carrier basis. *NANP Administration Third Report and Order*, 12 FCC Rcd 23077. See also Universal Service Order Federal-State Joint Board on Universal Service, *Report and Order*, 12 FCC Rcd 8776, 9177 (1997); *National Association of Regulatory Utility Commissioners v. FCC*, 553 F.2d 601, 608 (D.C. Cir. 1976); MTS and WATS Market Structure, Phase I, *Third Report and Order*, 93 FCC 2d 241 (1982).

¹⁶ "Majority" is defined to mean greater than 50%, and "debt" is defined to mean stocks, bonds, securities, notes, loans or any other instrument of indebtedness. 47 C.F.R. § 52.12(a)(1)(ii); Requirements Document at § 1.2; see also *NANP Administration Third Report and Order*, 12 FCC Rcd 23076.

¹⁷ 47 C.F.R. § 52.12(a)(1)(iii); Requirements Document at § 1.2; see also *NANP Administration Third Report and Order*, 12 FCC Rcd 23076.

¹⁸ *NANP Administration Third Report and Order*, 12 FCC Rcd 23071. The conditions and neutrality criteria that the Commission applied are codified in 47 C.F.R. § 52.12 *et seq.*

¹⁹ *NANP Administration Third Report and Order*, 12 FCC Rcd 23077-23081.

²⁰ *NANP Administration Third Report and Order*, 12 FCC Rcd 23080. See 47 C.F.R. § 52.12(a)(1)(i).

²¹ *NANP Administration Third Report and Order*, 12 FCC Rcd 23081.

5. In accordance with another recommendation by the NANC, the Commission also appointed Mitretek Systems (Mitretek) to serve as the alternate NANPA, stating that Mitretek could assume NANPA responsibilities for the remainder of the five-year term, if it wished to do so, should Lockheed not perform the NANPA functions in a satisfactory fashion.²² In addition, the Commission stated that if Lockheed or its affiliates in the future offer common carrier services that are more than *de minimis* in nature, it would reconsider the issue of Lockheed's neutrality under section 52.12 of the Commission's rules and consider taking action disqualifying Lockheed as the NANPA.²³ The Commission's rules further provide that, upon a determination at any time that the NANPA fails to comply with the neutrality criteria adopted in the Order or substantially or materially defaults in the performance of its obligations, the Commission shall advise the NANPA of such failure or default, request immediate corrective action, and permit the NANPA reasonable time to correct such failure or default.²⁴ Moreover, the rules provide that, if the NANPA is unwilling or unable to take corrective action, the Commission may, in a manner consistent with the requirements of the Administrative Procedure Act and the Communications Act, take any action that it deems appropriate, including termination of the NANPA's term of administration.²⁵

6. Lockheed assumed the NANPA functions in February 1998.²⁶ On August 28, 1998, Lockheed informed the NANC of its formation of a Global Telecommunications subsidiary to pursue opportunities in telecommunications network services.²⁷ In addition, on October 16, 1998, Lockheed filed an application seeking Commission consent to acquire Comsat Government Services, Inc. (CGSI), a wholly owned subsidiary of Comsat Corporation (Comsat), to facilitate the strategic aims of Lockheed's newly formed Global

²² *NANP Administration Third Report and Order*, 12 FCC Rcd 23075.

²³ *NANP Administration Third Report and Order*, 12 FCC Rcd 23081.

²⁴ 47 C.F.R. § 52.12(e). *See also* Requirements Document at § 1.7.

²⁵ 47 C.F.R. § 52.12(e).

²⁶ The Commission's order required Bellcore, the previous NANPA, to transition the NANP functions to Lockheed Martin no later than 90 days after selection of Lockheed Martin. *NANP Administration Third Report and Order*, 12 FCC Rcd 23073, n.226. Lockheed has also assumed the central office (CO) code administration functions in the United States under a longer transition timetable. The transition was completed in July 1999.

²⁷ Lockheed Martin Report to the North American Numbering Council and The Telecommunications Industry Concerning Lockheed Martin's Global Telecommunications Subsidiary, August 28, 1998.

Telecommunications subsidiary.²⁸ In light of these developments, Lockheed informed the NANC on October 22, 1998 that it intended to divest the CIS business unit in order to adhere to the Commission's neutrality requirement for the NANPA as the third party administrator of numbering resources.²⁹ Subsequently, on December 21, 1998, Lockheed and Warburg filed a Request for Expeditious Review for a proposed transfer of CIS by Lockheed to Warburg, which was drafted pursuant to the terms of a Transaction Agreement between Lockheed and Warburg, dated December 15, 1998.³⁰ The Bureau sought comment from interested parties on the Request.³¹

7. On March 31, 1999, the NANC reported its consensus findings on the original proposed divestiture.³² The NANC found that CISAC, the new entity that would acquire the NANPA function, did not meet all the criteria for neutrality as set forth in the Requirements Document and Commission rules.³³ Based on the safeguards in the Code of Conduct proposed by CISAC, however, the NANC found that CISAC would not be subject to undue influence by parties with a vested interest in the outcome of numbering administration activities.³⁴ The NANC also stated its belief that CISAC could perform the NANP functions

²⁸ See Lockheed Martin Corporation, Regulus, LLC, COMSAT Corporation, and COMSAT Government Services, Inc., application to International Bureau, Satellite Policy Branch, Report No. SPB-139 (rel. Oct. 23, 1998) (Lockheed/Comsat Application). COMSAT holds a 214 authorization to provide international common carrier services.

²⁹ Lockheed Martin Report to the North American Numbering Council and The Telecommunications Industry Concerning Lockheed Martin's Competitive Neutrality, October 22, 1998.

³⁰ See *supra* n.1.

³¹ See FCC Seeks Comment on Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Services Business, *Public Notice*, DA 99-347 (rel. Feb. 17, 1999) (February 17 Public Notice); FCC Seeks Comment on Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Services Business, *Public Notice*, DA 99-117 (rel. Jan. 7, 1999) (January 7 Public Notice). See also Mitretek Answers to Questions Posed to Mitretek Systems Concerning Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Services Business, CC Docket No. 92-237, NSD File No. 98-151 (filed Feb. 12, 1999) (Mitretek Answers); Lockheed Martin IMS Response to Questions and Issues Regarding Transfer of the Lockheed Martin Communications Industry Services Business, CC Docket No. 92-237, NSD File No. 98-151 (filed Feb. 16, 1999) (Lockheed Response).

³² Letter from Alan C. Hasselwander, North American Numbering Council, to Lawrence E. Strickling, FCC, dated March 31, 1999 (NANC Recommendation).

³³ NANC Recommendation at 1.

³⁴ NANC Recommendation at 1.

in accordance with the Requirements Document and Commission rules.³⁵ In addition, the NANC stated that, as a condition of an approval of the proposed transfer, CISAC should explicitly be required to cooperate fully with the pooling administrator,³⁶ should an entity other than CISAC be chosen as the pooling administrator.³⁷ Although some commenters to the February 17 Public Notice expressed specific concerns about the application of our neutrality criteria, only Mitretek and PanAmSat filed oppositions to the proposed transfer.³⁸

8. Warburg currently manages five private equity funds with approximately \$6.5 billion of assets under its management.³⁹ At the time that the Commission was reviewing the initial proposed transfer, approximately \$780 million of this amount represented investments in telecommunications service providers, which constitutes 12 percent of the assets invested as of June 8, 1999 in Warburg's private equity funds.⁴⁰ Also, as of June 8, Warburg reports investments in the following entities: a 50.6 percent interest in the Four Media Company (Four Media);⁴¹ a 20 percent interest in Covad Communications Company (Covad);⁴² a 14

³⁵ NANC Recommendation at 2.

³⁶ Telephone number pooling is an alternative method for allocating telephone numbers in smaller blocks than is currently the case. As presently envisioned, the pooling administration function is separate from the central office code administration function performed by the NANPA. See *In the Matter of Numbering Resource Optimization, Notice of Proposed Rulemaking*, CC Docket No. 99-200, FCC 99-122 (rel. June 2, 1999) at ¶¶ 182-185.

³⁷ NANC Recommendation at 2.

³⁸ Eight parties filed comments on the February 17 Public Notice. Commenters include: AirTouch Communications, Inc., AT&T Corp., MCI WorldCom, Inc., Mitretek, PanAmSat Corp., SBC Communications, Inc., Public Utility Commission of Texas, and United States Telephone Association.

³⁹ Request at 5; Letter from Michael G. Jones, Counsel for Warburg, Pincus & Co., to Magalie Roman Salas, FCC, dated June 8, 1999 (Warburg June 8 *ex parte*). The five private equity funds are: Warburg, Pincus Equity Partners (WPEP), LP, a Delaware limited partnership; Warburg, Pincus Capital Company, LP, a Delaware limited partnership; Warburg, Pincus Investors, LP, a Delaware limited partnership; Warburg, Pincus Ventures, LP, a Delaware limited partnership; Warburg, Pincus Ventures International, LP, a Bermuda limited partnership. Lockheed Response at 4.

⁴⁰ Warburg June 8 *ex parte* at 1. Warburg also states that it has an additional \$4 billion of committed capital available for investment that has not yet been invested. This amount together with the amount invested in its private equity funds brings their total assets to \$10.5 billion. Thus, telecommunications assets constitute 7.43 percent of Warburg's total assets. Warburg also reports that the total revenue of the telecommunications portfolio companies in its private equity funds is 2.4 percent of the total revenue of all the portfolio companies. *Id.*

⁴¹ Four Media holds a section 214 authorization for international services, as well as three satellite earth station common carrier authorizations and other FCC authorizations, that are used in the distribution of entertainment content, primarily via satellite. In this regard, Four Media, through its subsidiary, Catalina

percent interest in Primus Telecommunications Group, Inc. (Primus);⁴³ a two percent interest in Global Telesystems Group, Inc. (GTS);⁴⁴ a less than a half percent interest in NTL Telecommunications, Inc. (NTL);⁴⁵ and a \$6 million investment in a European joint-venture (European Venture).⁴⁶ Prior to the Commission's issuance of a ruling on the pending matter, Lockheed and Warburg, on July 1, 1999, terminated the December 15, 1998 Transaction Agreement and withdrew the original Request from our consideration.⁴⁷

9. In their Amended Request, filed on August 17, 1999, Lockheed and Warburg (the parties) ask the Commission to approve Lockheed's sale of CIS to NeuStar, Inc., a new

Transmission Corporation, operates a common carrier c-band video-oriented satellite earth station facility and resells transponder capacity for ad hoc and other occasional use and bundles its transponder capacity. See Letter from Philip L. Verveer, Counsel for Warburg, Pincus & Co., to Magalie Roman Salas, FCC, dated April 28, 1999 (Warburg April 28 *ex parte*). See also Radio Station Authorization issued to Catalina Transmission Corporation for call sign E940246 (File No. SES-LIC-19940316-01689); Radio Station Authorization issued to Catalina Transmission Corporation for call sign E920453 (File No. SES-RWL-19970708-00924); Radio Station Authorization issued to Catalina Transmission Corporation for call sign E2941 (File No. SES-MOD-19950911-00430). Warburg, however, recently announced its intention to sell its interests in Four Media to Liberty Media. See Communications Daily, November 2, 1999.

⁴² Covad is an authorized competitive local exchange carrier in 12 states and provides dedicated high-speed digital communications services using digital subscriber line (DSL) technology. Warburg states that Covad's services do not entail the utilization of NANPA-administered numbering resources. Warburg has two directors on Covad's eight-member Board of Directors. Warburg June 2 *ex parte* at 2; Lockheed Response at 13; Request at 16.

⁴³ Primus holds U.S. international section 214 authorizations for service to all permissible international destinations, as well as authorizations to resell interLATA and/or intraLATA interexchange services in the U.S. Warburg states that Primus' use of NANPA numbering resources is minimal because Primus' interLATA and intraLATA services in the U.S. are a small portion of its overall services and are ancillary to its primary international services focus. Warburg has one director on Primus' five-member Board of Directors. Request at 17-18; Lockheed Response at 15.

⁴⁴ Warburg June 2 *ex parte* at 2; Supplemental Response to North American Numbering Council Regarding the Transfer of NANPA Responsibilities," dated March 22, 1999 (Lockheed NANC Supplemental Response), at 2. GTS is a provider of telecommunications services outside of the U.S.

⁴⁵ Lockheed Response at 14. NTL holds two U.S. international section 214 authorizations for the provision of international messaging services. *Id.*

⁴⁶ Lockheed Response at 15. The European Venture was established to provide integrated telecommunications services to European business customers. *Id.*

⁴⁷ See *Ex Parte* letter from Cheryl Tritt, Counsel to Lockheed Martin IMS, to Magalie Roman Salas, Secretary, FCC (July 1, 1999).

company to be owned by Warburg and CIS management.⁴⁸ The parties state that they amended their original Request to respond to Commission concerns regarding the continued neutrality of CIS in light of Warburg's interests in several telecommunications companies and the ownership structure initially proposed by the parties.⁴⁹ Lockheed and Warburg now propose to restructure the transaction by transferring the CIS business to NeuStar, an independent corporation that will be controlled by an irrevocable voting trust. The parties believe this corporate structure will safeguard the neutrality of the NANPA by removing opportunities for Warburg to use its ownership interest in the NANPA to advantage any of Warburg's other telecommunications interests.⁵⁰

10. Under the terms of the revised Transaction Agreement proposed by the parties, WPEP will own a 9.9 percent interest in NeuStar; NeuStar management will own a 28.1 percent interest in NeuStar; and Lockheed will own a three percent interest in NeuStar. The remaining 59 percent interest in NeuStar will be owned by a voting trust, which will control the voting rights of the shares in the trust. As beneficiaries of the trust, WPEP and NeuStar Management will retain a 54 percent interest and five percent interest, respectively, in the economic rights of the voting trust shares. The trust will be administered by two unaffiliated trustees, who will have no familial or business connection with Warburg, WPEP, or NeuStar management and who will have voting rights for the trust's 59 percent shares.⁵¹ The income rights for the trust's shares, however, will belong to NeuStar management and WPEP as shareholders.

11. The beneficiaries of the trust will include at least 25 individuals comprised of the individual WPEP investors and NeuStar management.⁵² The trustees would vote on the

⁴⁸ Amended Request at 2.

⁴⁹ Amended Request at 4. Under the original proposal, 95 percent of the equity stock of the new company was to be held by WPEP and Lockheed would hold the remaining five percent. Amended Request at 3; Request at 6.

⁵⁰ Amended Request at ii, 1-2, 4, 7 and 8.

⁵¹ Amended Request at 8; Supplemental Amended Request at 2. The trustees will not be the same individuals who are the unaffiliated directors. Lockheed Reply Comments at 6; Supplemental Amended Request at 2. To allay concerns raised by Mitretek regarding the ability of Warburg, as the primary beneficiary of the voting trust, to exercise control over the trustees through its control of the trustees' compensation, the parties have agreed to modify the draft Trust Agreement to guarantee at the outset a specific level of compensation to the trustees for the life of the trust. Lockheed Reply Comments at 9. See Mitretek Comments at 4; Lynn Stout Comments at 2.

⁵² Amended Request at 4.

majority of matters that are ordinarily subject to shareholder vote;⁵³ and, Warburg, WPEP and NeuStar management will be able to vote their trust shares only under specific circumstances.⁵⁴ The trustees will be initially appointed by a majority of the five-member NeuStar Board of Directors, including the vote of at least one Warburg representative on the Board.⁵⁵ In addition, the trust will not hold any voting or economic investments in any other entity, including any telecommunications service provider.⁵⁶ The parties thus argue that the trustees will have a fiduciary responsibility to vote the shares of the trust solely in the economic interest of NeuStar and will not have any obligation to any other WPEP investment.⁵⁷

12. The NeuStar Board will have two Warburg representatives and two unaffiliated directors who will have no familial or business connection with Warburg, WPEP, or NeuStar management.⁵⁸ Jeffrey Ganek, Senior Vice President and Managing Director of CIS, will be the fifth director and will also serve as Chairman of the Board.⁵⁹ The two

⁵³ Lockheed Reply Comments at 12. The parties state that the matters subject to voting by the trustees would include the election of independent directors for three-year terms, amendments to NeuStar's certificate of incorporation, executive compensation or any matters requiring a shareholder vote under tax or other regulations or under any contract, indenture, debt instrument or otherwise. *Id.* The trustees will also participate in the removal of any directors, all of whom may be removed by a three-fourths vote of the voting shares. Amended Request at 5.

⁵⁴ Amended Request at 6, 8. Warburg, WPEP and NeuStar will have voting control of the trust shares when there is: (i) a merger or consolidation of NeuStar; (ii) an issuance of any additional shares; (iii) a material acquisition by NeuStar; (iv) a sale of all or substantially all of the assets of NeuStar; (v) a liquidation or dissolution of NeuStar; (vi) the incurring of specified material indebtedness, mortgages and loans not in the ordinary course of business. WPEP also will be able to distribute the NeuStar shares that are subject to the trust or the proceeds from those shares to its individual investors. Amended Request at 6-7.

⁵⁵ Amended Request at iii, 6. The trustees will be removable by any majority vote of the NeuStar Board. Amended Request at 6.

⁵⁶ Amended Request at iii, 5.

⁵⁷ Amended Request at iii.

⁵⁸ Amended Request at ii; Supplemental Amended Request at 2. The initial two unaffiliated directors will be chosen by the Chairman of the Board. Amended Request at 5. Jeffrey Ganek has nominated Dr. Kenneth Pickar and Henry Geller, both of whom have distinguished careers in telecommunications policy, as the unaffiliated directors. Amended Request at ii, 5-6.

⁵⁹ Amended Request at ii; Supplemental Amended Request at 2. All directors will serve three-year terms unless they resign or are removed by a three-fourths vote of the voting shares, including those shares held in the trust. Amended Request at 5. When any unaffiliated director is replaced, the Chairman and the remaining unaffiliated director will nominate a successor and submit the nomination to the NeuStar Board. Such nomination will be confirmed by majority vote of the Board, including the vote of at least one Warburg representative. The successor unaffiliated director must then be approved by a majority of the voting shares, a procedure which gives the trustees a veto over any successor independent director. Supplemental Amended

unaffiliated directors will also serve on any Board committee that oversees the quarterly neutrality reviews that the parties have proposed below.⁶⁰

13. Lockheed and Warburg also propose to abide by a Code of Conduct "to further ensure" NeuStar's neutrality.⁶¹ The Code contains provisions that purport to ensure that NeuStar manages all of its operations in competitively neutral ways that meet the needs of the industry, that all service providers are treated equally, and that the confidentiality of all NeuStar data is maintained.⁶² Furthermore, no person employed by, or serving in the management of any NeuStar shareholder will be directly involved in the day-to-day operations of NeuStar.⁶³ No employees of any telecommunications service provider will be simultaneously employed by NeuStar.⁶⁴ Warburg will not control more than 40 percent of NeuStar's Board and NeuStar Board members are prohibited from simultaneously serving on the boards of any telecommunications service providers. No NeuStar employee will hold any interest in any company that would violate the Commission's neutrality requirements or the Number Portability Administration Center (NPAC) Contractor Services Agreements.⁶⁵ Finally, NeuStar will hire an independent party to conduct a neutrality review of NeuStar on a quarterly basis.⁶⁶

14. The parties state that CIS will be transferred intact, and that the sole business objective of the new company, NeuStar, is to provide NANP administration and other neutral

Request at 3; Amended Request at 6. To diminish the possibility that both unaffiliated directorships or both Warburg directorships become vacant simultaneously, the terms of the initial directors will be staggered. Supplemental Amended Request at 2.

⁶⁰ Amended Request at 5.

⁶¹ Supplemental Amended Request, Exhibit A - Revised NeuStar Code of Conduct; Amended Request at 7. *See infra*, Appendix A.

⁶² Revised NeuStar Code of Conduct; Supplemental Amended Request at 3.

⁶³ Revised NeuStar Code of Conduct.

⁶⁴ Revised NeuStar Code of Conduct; Supplemental Amended Request at 3.

⁶⁵ Revised NeuStar Code of Conduct.

⁶⁶ Revised NeuStar Code of Conduct. The neutrality analyst will be mutually agreed upon by NeuStar, the FCC, the NANC and the LLCs. NeuStar will pay the expenses of conducting the review. The results of the review will be provided to the LLCs, the NANC, and to the FCC. NeuStar, however, would like the results of the review to be deemed to be confidential and proprietary information of NeuStar and its shareholders. *Id.*

third party services to the telecommunications industry.⁶⁷ NeuStar will be primarily financed by funds from subscriptions for the NeuStar shares that are subject to the trust.⁶⁸ Lockheed and Warburg maintain that NeuStar will deliver the same services, under the terms stated in the Requirements Document, and using the same systems, processes and staff.⁶⁹ The parties, thus, maintain that the proposed transfer of CIS will serve the public interest.⁷⁰

15. In a Public Notice released on August 17, 1999, the Bureau sought comment from the public and from the NANC on the Amended Request.⁷¹ From the comments and replies we received, all the parties, except for Mitretek and its consultant, Professor Lynn Stout, expressed support for the proposed transfer.⁷² On August 30, 1999, the NANC informed the Commission that it has reviewed the Amended Request and has concluded that the restructured proposal is substantially better than the previous proposal that it found to be adequate, and that the business arrangement set forth in the Amended Request fully satisfies the needs of the telecommunications industry for a neutral third party numbering administrator.⁷³

16. On September 15, 1999, the Commission authorized Lockheed to acquire CGSI and to purchase up to 49 percent of Comsat stock.⁷⁴ This authority allows Lockheed to

⁶⁷ Letter from Cheryl Tritt, Counsel to Lockheed Martin IMS, to Magalie Roman Salas, FCC, dated September 28, 1999 (Lockheed Sep. 28 *ex parte*), at 2; Request at 5; Amended Request at 3.

⁶⁸ Amended Request at 5.

⁶⁹ Request at 6.

⁷⁰ Amended Request at 10; Supplemental Amended Request at 5. *See also* Request at 9-10.

⁷¹ Common Carrier Bureau Seeks Comment on Lockheed Martin IMS Corporation and Warburg, Pincus & Company Amended Request for Expedious Review of the Transfer of the Communications Industry Services Business, *Public Notice*, DA 99-1647 (rel. Aug. 17, 1999) (Aug. 17 Public Notice).

⁷² Six parties filed comments with the Bureau on September 7, 1999 and two parties filed replies on September 17, 1999. The parties include: AT&T Corp. (AT&T); Chamber of Commerce of the United States (U.S. Chamber of Commerce); MCI WorldCom, Inc. (MCI WorldCom); Mitretek Systems (Mitretek); Lynn Stout (filing comments at Mitretek's request); and United States Telephone Association (USTA).

⁷³ Letter from Alan C. Hasselwander, Chairman, NANC, to Lawrence E. Strickling, Chief, Common Carrier Bureau, FCC, dated August 30, 1999.

⁷⁴ Lockheed Martin Corporation Regulus, LLC and Comsat Corporation, Application for Transfer of Control of Comsat Government Systems, Inc., Holder of an International Section 214 Authorization and Earth Station Licenses E960186 and E960187, *Memorandum, Order and Authorization*, FCC 99-237 (rel. Sep. 15, 1999) (*Lockheed/Comsat Order*) at ¶ 1. In the second phase of the proposed purchase, Lockheed states that it

acquire control of CGSI's FCC licenses, which would make Lockheed a telecommunications service provider with common carrier status.⁷⁵ In the *Lockheed/Comsat Order*, we stated that our grant of authority to Lockheed to acquire CGSI and a portion of Comsat's stock did not signal our approval of Lockheed's proposal to divest the NANPA, nor did it constitute a determination regarding Lockheed's neutrality once that transaction was consummated.⁷⁶

DISCUSSION

A. Commission Authority Over the NANP Administration Functions.

17. The Commission's authority to select a neutral administrator for the North American Numbering Plan, or NANP, is explicit in section 251(e) of the Communications Act, as amended by the 1996 Act.⁷⁷ Thus, Congress has vested with the Commission exclusive authority to choose an entity to serve as the NANPA. Through our selection of Lockheed as the NANPA, the Commission delegated authority to Lockheed to perform the numbering administration duties in accordance with our orders, rules, and the Requirements Document. The Commission did not, however, delegate to Lockheed the authority to select a successor or otherwise "designate" another entity to perform the NANPA functions.⁷⁸ Because this Commission alone has statutory authority to select the NANPA, and we have not delegated this authority to Lockheed or any other entity, we conclude that Lockheed must

plans to acquire a 100 percent interest in Comsat as the result of a merger of Comsat with Lockheed. These plans are contingent upon an amendment of section 734(b) of the Communications Satellite Act of 1962 removing the current prohibition on an authorized common carrier to own more than 50 percent of the stock of Comsat. *Lockheed/Comsat Order* at ¶ 1; 47 U.S.C. § 734(b); *Lockheed/Comsat Application* at 2.

⁷⁵ *Lockheed/Comsat Order* at ¶ 2.

⁷⁶ *Lockheed/Comsat Order* at ¶ 51. The transaction was consummated on September 18, 1999. See Letter from Raymond Bender, Jr., Lockheed, Counsel for Lockheed Martin Corporation, to Magalie Roman Salas, Secretary, FCC, dated September 20, 1999.

⁷⁷ Section 251(e) provides that "[t]he Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis." 47 U.S.C. § 251(e).

⁷⁸ Mitretek contends that Lockheed must not be permitted to divest the NANPA to the buyer of its choice because the public interest in the NANPA should not be regarded as a saleable commodity. Letter from H. Gilbert Miller, Mitretek Systems, to Lawrence E. Strickling, FCC, dated December 8, 1998 (*Mitretek Dec. 8 ex parte*; Attachment at 2. In response, Lockheed and Warburg argue that Mitretek's argument is not supported by legal authority. *Lockheed Sep. 28 ex parte* at 4.

obtain our prior approval to transfer the NANPA functions to any other entity.⁷⁹ Moreover, any successor NANPA also must meet the same neutrality requirements that Lockheed was required to meet.⁸⁰ Therefore, notwithstanding Lockheed's proposal to transfer the NANPA business to NeuStar, we must independently evaluate NeuStar's suitability to serve as the NANPA, and also determine whether it meets the requirements stated in our rules and orders.

B. Lockheed's Compliance With the Neutrality Requirements.

18. In addition to meeting the Commission's requirements set forth in the regulations, the NANPA must be impartial, and may not be aligned with any particular telecommunications industry segment.⁸¹ As a threshold matter, we find that no provider of a telecommunications service, because of its direct participation as a competitor in the telecommunications market, can meet these qualifications. Lockheed, due to its acquisition of CGSI and 49 percent of Comsat, is now a telecommunications service provider.⁸² As such, Lockheed may no longer serve as the NANPA under the requirements set forth in our rules and orders.

19. Our rules provide further that, in the event of the NANPA's default in the performance of its obligations, the Commission shall advise the NANPA of such default, request immediate corrective action, and permit the NANPA reasonable time to correct.⁸³ In light of our conclusion above and because Lockheed has already initiated steps to divest the NANPA functions to a new entity and to preserve its own neutrality until such divestiture takes place,⁸⁴ we find it unnecessary to formally notify Lockheed that it has defaulted on its

⁷⁹ Lockheed concedes that the Commission has the power to approve a transfer of the NANP administrator under Section 251(e) of the Communications Act. Lockheed Sep. 27 *ex parte* at 4 n.11; Lockheed May 7 *ex parte* at 3.

⁸⁰ *NANP Administration Third Report and Order*, 12 FCC Rcd 23076.

⁸¹ 47 C.F.R. § 52.12(a)(1). *See also NANP Administration Third Report and Order*, 12 FCC Rcd 23077 (citations omitted).

⁸² *See supra* n.57.

⁸³ *See* 47 C.F.R. § 52.12(e). *See also* Requirements Document at § 1.7.

⁸⁴ *See supra* ¶¶ 6-8; *see also* Code of Conduct, appended to Letter of J. G. Harrington, Counsel to Lockheed Martin, to Magalie Roman Salas, Secretary, FCC, dated September 16, 1999. *See also* Letter of J. G. Harrington, Counsel to Lockheed Martin, to Magalie Roman Salas, Secretary, FCC, dated September 22, 1999; Letter of J. G. Harrington, Counsel to Lockheed Martin, to Magalie Roman Salas, Secretary, FCC, dated September 23, 1999. Lockheed informs us that it has implemented a Code of Conduct to safeguard the NANPA's neutrality by insulating CIS from Lockheed's newly acquired telecommunications interests pending the

NANPA obligations by becoming a telecommunications service provider. We need only determine if Lockheed's proposed "corrective" action -- transfer of the NANPA business to NeuStar -- is consistent with our rules.

20. We also note that, in the event that the NANPA's default in the performance of its obligations is not corrected within a reasonable time, we designated Mitretek as the alternate NANPA in the *NANP Administration Third Report and Order*.⁸⁵ In designating Mitretek as the alternate, we did not intend for Mitretek automatically to succeed Lockheed as the NANPA in the event of a breach by Lockheed, as Mitretek argues.⁸⁶ In fact, we explicitly stated our intent to allow the NANPA an opportunity to cure any breach before being replaced with an alternate.⁸⁷ Therefore, Mitretek's designation as the alternate was primarily a mechanism for the Commission to avoid initiating another lengthy, disruptive, evaluation process, should Lockheed be unable to cure a breach. We therefore will not consider replacing Lockheed with the alternate NANPA unless or until we determine that Lockheed has failed to correct within a reasonable time its breach of the NANPA obligations.

C. Evaluation of NeuStar

21. Under the first proposal submitted by Lockheed, Warburg, as the entity to which CIS would have been transferred, would have been subject to compliance with our neutrality requirements. In this instance, however, it is NeuStar, not Warburg, that is subject to compliance with our neutrality requirements. In evaluating NeuStar's suitability to serve as the NANPA, we must evaluate NeuStar's ability to meet the requirements set forth in our order and in sections 52.12 and 52.13 of our rules, which fall into two general categories: performance and neutrality. Regarding the new entity's ability to perform the NANPA functions, the NANC has stated that it believes that the new entity, which is comprised of the existing CIS business unit that currently performs the NANPA functions, would continue to perform the NANPA functions in accordance with the Requirements Document and Commission rules.⁸⁸

Commission's ruling in this proceeding.

⁸⁵ *NANP Administration Third Report and Order*, 12 FCC Rcd 23081.

⁸⁶ Mitretek Reply Comments at 8-9, 15.

⁸⁷ 47 C.F.R. § 52.12(e). *See also* Requirements Document at § 1.7.

⁸⁸ NANC Recommendation at 2.

22. Because the parties represent credibly that only the ownership of the NANPA would change,⁸⁹ we agree with the NANC's assessment that the transfer of CIS intact would not affect the NANPA's immediate ability to perform its functions in any appreciable way. Given that Warburg will not be involved in the day to day management of NeuStar, we agree with the parties that Warburg's own expertise, or lack thereof, in numbering administration is irrelevant to our evaluation of NeuStar's capabilities as the NANPA.⁹⁰ We also find that NeuStar's affiliation with Warburg will provide it with a reliable source of financing, and therefore, we expect that NeuStar will remain adequately capitalized, and thus able to perform the NANPA functions. We undertake in this order, therefore, only to evaluate the neutrality of NeuStar. Because we also recognize the need to ensure that the quality of service remains consistent under the new ownership structure, however, we will ask the NANC to continue to exercise its oversight of the NANPA's performance, including conducting an annual appraisal of the NANPA's performance.⁹¹ We, moreover, will continue to require the NANPA to correct any deficiencies noted in the NANC's appraisals.

23. *Compliance with the neutrality criteria.* Lockheed and Warburg argue that NeuStar is a neutral third party entity because the proposed organizational structure ensures that no single holder of more than 9.9 percent of the voting rights for NeuStar's equity will be a telecommunications service provider or will hold more than 9.9 percent of a telecommunications service provider, consistent with the provisions of Criterion One of our neutrality rules.⁹² The parties further maintain that the proposed transaction complies with Criterion Two because NeuStar will not issue any debt to any telecommunications service providers, and neither NeuStar nor any affiliate will derive a majority of its revenue from any single telecommunications service provider.⁹³ In addition, Lockheed and Warburg argue that an analysis of NeuStar's ownership structure demonstrates that NeuStar is not subject to undue

⁸⁹ See *supra* ¶ 14.

⁹⁰ Lockheed Sep. 28 *ex parte* at 2.

⁹¹ The NANC's NANPA Oversight Committee conducted an appraisal of Lockheed's performance as the NANPA this year. See *NANPA Annual Performance Evaluation*, April 21, 1999. The NANC found that Lockheed was performing at an acceptable level. The NANC, however, also found some deficiencies in the NANPA's performance concerning communication, the timeliness of administration, and NPA relief planning. *Id.* at 31-33. The NANPA has responded to the NANC's concerns by improving internal and external communication, increasing staffing, and providing more detailed reporting of its activities. See NANC Meeting Minutes, June 22-23, 1999; NANC Meeting Minutes, August 24-25, 1999.

⁹² Amended Request at 8. See *supra* ¶ 3 for discussion of our neutrality criteria.

⁹³ Amended Request at 8, n.9.

influence by parties with a vested interest in the outcome of numbering activities.⁹⁴ Mitretek, on the other hand, contends that the proposed transfer to NeuStar will clearly violate the Commission's neutrality standard because its largest shareholder, Warburg, is aligned with several telecommunications interests.⁹⁵ Moreover, Mitretek states that the particular construction of the neutrality criteria urged by Lockheed and Warburg undermines public confidence that the Commission's rules and policies can be enforced.⁹⁶

24. In reviewing the neutrality of NeuStar, we employ the definitions and criteria we used in the *NANP Administration Third Report and Order* and our rules.⁹⁷ The purpose of the neutrality criteria is three-fold. First, they set a clear standard by which to govern the NANPA's impartiality to ensure that entities seeking to participate in the telecommunications marketplace obtain timely and efficient access to numbering resources, and that no particular industry segment, consumer group, or technology is unduly favored or disadvantaged.⁹⁸ Second, the criteria ensure that the NANPA remains neutral in order to maintain the trust and confidence of the entities that must submit sensitive data to the NANPA in its numbering administration activities. Third, the criteria ensure that the NANPA is able to comply with its obligations without extensive and constant Commission oversight. Criteria One and Two serve as objective, quantifiable measures intended to prevent the NANPA from maintaining financial or equity relationships with telecommunications service providers that could exert control over the decisions and activities of the NANPA or otherwise compromise its impartiality. Criterion three, however, affords us broad discretion to determine whether the entity is subject to undue influence by parties with a vested interest in the outcome of numbering administration activities. In this order, as did the Commission in the *NANP Administration Third Report and Order*, we will evaluate NeuStar's neutrality under each of the three criteria.

25. *Criterion One: Affiliate Relationship with Telecommunications Providers.* Section 52.12(a)(1)(i) of our rules provides that the NANPA may not be an affiliate of any

⁹⁴ Amended Request at iii, 7, 9.

⁹⁵ Mitretek Comments at 3; Mitretek Reply Comments at 3, 10, 12, 14-15. All references to Mitretek Comments refer to the September 1999 comments listed at n.54.

⁹⁶ Mitretek Comments at 7.

⁹⁷ *NANP Administration Third Report and Order*, 12 FCC Rcd 23080-23081; 47 C.F.R. § 52.12(a)(1).

⁹⁸ *NANP Order*, 11 FCC Rcd 2595-96. We note that the billing and collection functions carried out by the NANPA also require a neutral entity responsible for these tasks since they involve the calculation, assessment, billing, and collection of payments for numbering administration functions. *NANP Administration Third Report and Order*, 12 FCC Rcd 23057.

telecommunications service provider. In the *NANP Administration Third Report and Order*, the Commission determined, in accordance with the Act's definitions of "telecommunications" and "telecommunications service," and federal precedent,⁹⁹ that telecommunications service providers are carriers that hold themselves out "to service indifferently all potential users" of common carrier services.¹⁰⁰ It also determined that common carrier services include services offered to other carriers. Further, the Commission concluded that whether an affiliate is a telecommunications service provider does not depend on whether it provides services directly to end users, but instead on whether it has "been authorized to offer services indiscriminately to the public," and is, therefore, "providing services on a common carrier basis."¹⁰¹

26. NeuStar itself will not provide telecommunications services, nor will NeuStar have an affiliate relationship with a provider of telecommunications services. NeuStar's affiliates are those persons or entities that will: 1) own a 10 percent or more equity interest in NeuStar; 2) have the power to vote 10 percent or more of NeuStar's securities; or 3) have the power to direct NeuStar's management and policies.¹⁰² We find, therefore, that NeuStar management and the voting trust, because of their respective 28.1 percent and 59 percent interests in NeuStar, are affiliates of NeuStar. We also find that WPEP and its parent Warburg, because they indirectly own 54 percent of Neustar through their interest in the voting trust in addition to directly owning 9.9 percent of Neustar, are affiliates of NeuStar. Neither of these entities, however, is a telecommunications service provider as defined under the Act and our rules.¹⁰³ Therefore, we conclude Criterion One is satisfied.

27. *Criterion Two: Debt or Revenues from Telecommunications Services Providers.* Section 52.12(a)(1)(ii) of our rules provides that neither the NANPA nor any of its affiliates may issue a majority of its debt to, or derive a majority of its revenues from, any telecommunications service provider. Although Warburg is providing most of the operating capital, and thus, those investments will comprise more than 50 percent of NeuStar's revenue, we conclude that Warburg's investment in NeuStar does not constitute a violation of this

⁹⁹ 47 U.S.C. § 153(43); 47 U.S.C. § 153(46). See also *NANP Administration Third Report and Order*, 12 FCC Rcd 23077.

¹⁰⁰ *NANP Administration Third Report and Order*, 12 FCC Rcd 23077 (citations omitted).

¹⁰¹ *NANP Administration Third Report and Order*, 12 FCC Rcd 23077.

¹⁰² See *supra* n.14 for the definition of affiliate in our rules.

¹⁰³ We recognize that Warburg and WPEP have several affiliate relationships with telecommunications service providers through their ownership of an equity interest in those companies. These telecommunications holdings, however, do not make Warburg and WPEP telecommunications service providers, and these affiliate relationships cannot be attributed to NeuStar, under Criterion one. See *supra* ¶ 8 for discussion of Warburg and WPEP's telecommunications holdings.

criterion because Warburg is not a telecommunications service provider. Moreover, Lockheed's investment in NeuStar is limited to three percent, which falls below the 50 percent threshold in this provision. Because they are not telecommunications service providers, neither NeuStar management, nor the voting trust present any issues under this criterion, either. Therefore, we find that Criterion Two is satisfied.

28. *Criterion Three: Undue Influence.* We now consider section 52.12(a)(1)(iii) of our rules, which provides that, notwithstanding the first two neutrality criteria, we may determine that the NANPA may or may not be subject to undue influence by parties with a vested interest in the outcome of numbering administration and activities. We must determine, therefore, whether we believe NeuStar will be subject to undue influence by any party with a vested interest in the outcome of numbering administration and activities.

29. We find that Warburg, by virtue of its investments in telecommunications service providers, would have an interest in the outcome of numbering administration and activities.¹⁰⁴ Although there is no indication that any of the telecommunications service providers affiliated with Warburg¹⁰⁵ currently use numbering resources, each of these affiliates is authorized to provide telecommunications services on a common carrier basis and certain of them are positioned to compete directly with other telecommunications service providers that do use numbering resources.¹⁰⁶ As such, these affiliates have an interest in numbering administration issues, and in particular, in obtaining information about how their competitors obtain and use numbers because such information may reveal the marketing strategies of these competitors.¹⁰⁷

30. Although NeuStar, not Warburg, is subject to compliance with our neutrality requirements, we nevertheless are concerned about the extent of Warburg's holdings in telecommunications service providers. Warburg invests in several companies that are

¹⁰⁴ See *supra* discussion at ¶ 8.

¹⁰⁵ See ¶ 30 *infra*.

¹⁰⁶ For example, we note that Covad, on June 7, 1999, issued a press release announcing that it has completed trials that successfully demonstrate its ability to provide voice over DSL. While this is not determinative of Covad's intent to obtain numbering resources in the future, it is indicative that Covad's market position continues to evolve and demonstrates Covad's intent to compete head to head with entities that do utilize numbering resources. See "Covad Successfully Executes Trials of Combined Voice and Data Over DSL," press release, dated June 7, 1999. This document is available at <http://www.covad.com/about/press_releases/press_060799.html>

¹⁰⁷ In addition, Mitretek and Professor Lynn Stout raise several arguments disputing the ability of NeuStar to remain neutral under the proposed structure. See *generally* Mitretek Comments; Mitretek Reply Comments. See *also* Lynn Stout Comments; Lynn Stout Reply Comments.

"authorized to offer telecommunications services indiscriminately to the public," and thus are telecommunications service providers.¹⁰⁸ Moreover, because Warburg's interests in Four Media, Covad, and Primus exceed the 10 percent equity interest threshold as defined in section 52.12(a)(1)(i) of our rules, Warburg is an affiliate of at least three telecommunications service providers.¹⁰⁹ Also, in their Amended Request, the parties inform us that Warburg has continued to make new investments since the submission of the original Request.¹¹⁰ The present level of Warburg's investment in the telecommunications market, as well as the likelihood that those investments will continue to increase, raises concerns about Warburg's incentive to influence NeuStar in a manner that might compromise NeuStar's neutrality.

31. Given these concerns, we must consider whether the proposed structure of the voting trust will sufficiently guard against Warburg exercising undue influence on NeuStar.¹¹¹ We conclude that, despite Warburg's investments in telecommunications service providers, the placement of a large majority of Warburg's shares in the voting trust structure proposed by the parties will adequately prevent Warburg or its affiliates from exercising undue influence on the NANPA in its numbering administration duties. We decline to evaluate the independence of the NeuStar voting trust in the context of the regulation of investment companies, as Professor Stout undertakes to do.¹¹² Instead, we evaluate the independence of the trust in a manner consistent with the exercise of judgment afforded under the Third Criterion.

32. The presence of unaffiliated directors and trustees, who owe fiduciary duties to parties other than Warburg with a paramount interest in ensuring NeuStar's neutrality, should

¹⁰⁸ See *supra* ¶ 25 for discussion of the definition of a telecommunications service provider.

¹⁰⁹ Because the GTS and NTL equity interests are not greater than ten percent, these companies are not affiliates of Warburg, and thus Warburg's interest in them would not violate our neutrality criteria, even if those criteria did apply to Warburg. We do not have any information as to the ratio of Warburg's equity interest in the European Venture to its total assets.

¹¹⁰ Amended Request at 3 n.6.

¹¹¹ Amended Request at 9.

¹¹² Although Professor Stout does not offer any citations to support her analysis in her comments and reply comments, we have been informed by Mitretek that her analysis is based on the discussion of voting trusts in the context of the regulation of investment companies, as noted in articles provided to us by Mitretek. See Letter from John E. Logan, counsel for Mitretek, to Magalie Roman Salas, Secretary, Federal Communications Commission, with attachments (dated October 12, 1999) (Mitretek Oct. 12, 1999 *ex parte*). Although the Investment Company Act of 1940 may be informative by analogy, the present voting trust is not subject to those statutory requirements.

ensure that NeuStar does not compromise its neutrality obligations.¹¹³ Contrary to arguments raised by Mitretek and Professor Stout that the proposed organizational structure will permit Warburg to exercise control over the actions of the unaffiliated directors and trustees,¹¹⁴ the structure of the NeuStar Board and the terms of the Trust Agreement provide a strong basis for the directors and trustees to act independently and prevent any attempt by Warburg to exercise improper influence. The independence of the trustees is reinforced by the establishment of a specific level of compensation for the trustees during the life of the trust.¹¹⁵ The structure also mitigates Warburg's influence over NeuStar through the trustees because, although Warburg participates in the selection of successor trustees,¹¹⁶ the trustees do not participate in the day to day management of NeuStar.¹¹⁷ Thus, Warburg's reservation of a veto in the selection of successor trustees presents no real threat to NeuStar's neutrality, because any influence that Warburg might have over successor trustees would not likely have any effect on NeuStar's numbering administration activities.

33. Moreover, the presence of the unaffiliated directors and trustees will counterbalance Warburg's influence over matters before the Board. First, we note that, as with the selection of successor trustees, Warburg has attempted to reserve for itself a veto in the selection of successor unaffiliated directors. Based on our understanding of the corporate structure proposed, this reservation has no practical effect, however, because at least one Warburg board member would necessarily participate in the selection of a new unaffiliated director who must be chosen by a majority of the remaining four board members (*i.e.* three members).¹¹⁸ Moreover, any successor unaffiliated director nominated by the Board must be approved by the trustees. Second, because Warburg will control only 40 percent of the Board's vote, it is unlikely that Warburg's participation in decisions such as the selection of a new Chairman will render NeuStar under the control of Warburg. In addition, the presence of Jeffrey Ganek, the current Senior Vice President and Managing Director of CIS, on the board as NeuStar's proposed CEO further erodes Warburg's influence, primarily because his own

¹¹³ Lockheed Reply Comments at iii; Amended Request at 7; Lockheed Reply Comments at iii. We do not believe that it is necessary for the unaffiliated NeuStar directors and trustees to owe fiduciary duties to the general public, as Professor Stout's suggests, in order for them to act in a manner that maintains NeuStar's neutrality. *See* Lynn Stout Comments at 4.

¹¹⁴ Mitretek Comments at 4. *See also* Lynn Stout Comments at 2-4; Lynn Stout Reply Comments at 1.

¹¹⁵ *See supra* n.51.

¹¹⁶ *See supra* text accompanying n.55 (describing Warburg's reservation of a "veto" in the selection of successor trustees).

¹¹⁷ *See supra* n.53.

¹¹⁸ *See supra* n.59.

success is dependent on the success of NeuStar, which must remain neutral to continue in business, and therefore his interests are independent from those of Warburg, which has many other investments that overshadow the value of its investment in NeuStar.¹¹⁹

34. Contrary to Mitretek's contention, we also conclude that NeuStar's stated commitment to implement a Code of Conduct is an additional safeguard that should provide an additional, appreciable level of protection against the exercise of undue influence by Warburg.¹²⁰ The Code of Conduct sets clear parameters proscribing behavior that would compromise NeuStar's neutrality, and we commend Lockheed and Warburg's implementation of these additional measures. We condition our approval of the transfer of the NANPA functions to NeuStar on NeuStar's adherence to the Code of Conduct, and the additional protections we propose below.

35. The Code of Conduct requires the parties to hire an independent entity to conduct a neutrality review, or audit, of NeuStar on a quarterly basis and commit to provide the results of this review to the Common Carrier Bureau (Bureau), the NANC, and the designated LLC representatives. We agree that a quarterly audit will provide additional incentive for NeuStar to maintain its neutrality, and we add the following conditions to better define the scope of the audits and the procedures to be followed. First, we require that the independent auditor selected by the parties must meet the approval of the Commission.¹²¹ Second, the independent auditor must consult with the Bureau in developing the methodology of the neutrality review, which will encompass NeuStar's compliance with the proposed Code of Conduct and the Commission's neutrality rules in 47 C.F.R. § 52.12(a)(1). Third, to ensure that the public maintains confidence in the results of the audit, we require that the auditor adhere to the relevant standards of the American Institute of Certified Public Accountants ("AICPA") when performing the engagement and submitting its report.¹²² Fourth, the

¹¹⁹ Thus, we disagree with Mitretek's position that Mr. Ganek is a Warburg nominee and therefore controlled by Warburg. *See* Mitretek Comments at 4; Mitretek Reply Comments at 11. *See also* Lockheed Reply Comments at 7.

¹²⁰ Mitretek Comments at 5.

¹²¹ The parties should refer matters concerning the independent auditor to the Common Carrier Bureau, acting pursuant to delegated authority.

¹²² AICPA standards require the auditor to maintain independence in all matters relating to the assignment. AICPA standards refer to the type of review to be performed as an "attest engagement." *See* American Inst. of Certified Pub. Accountants, Attestation Standards, AT § 100; Compliance Attestation, AT § 500. This will require NeuStar's management to make an assertion regarding its compliance with the Commission's neutrality rules, and for the independent auditor to express a conclusion about the reliability of the assertion. Also, consistent with AICPA standards, the auditor's report must present a "positive opinion" and note any exceptions uncovered during the engagement.

auditor's working papers should be available upon request for the Bureau's review. Fifth, we add the requirement that the NeuStar Board review the results of the audit for independence, integrity, accuracy and irregularities, and certify its acceptance of the audit report by attesting and forwarding it to the Bureau and other relevant parties. Sixth, as proposed by the parties, we will also require that the two unaffiliated directors serve on any NeuStar Board committee that oversees these neutrality reviews. Seventh, should the neutrality audit uncover any aspect of the NANPA's neutrality or performance that requires corrective action, we require that the Board submit a proposal to the Bureau describing what corrective action, if any, it intends to take.

36. Furthermore, although the parties propose to have the results of the neutrality review be deemed confidential and proprietary, we require that the results be made available to the public with proprietary information redacted as necessary. In providing for public review of the NANPA's performance, we seek to encourage and enlist participation by the industry in the oversight of the NANPA's compliance with our requirements.

37. Finally, although we find the current structure of NeuStar to be consistent with our neutrality criteria, we recognize that any change in the structure of the voting trust, the Board of Directors, or overall ownership structure may render NeuStar in violation of our neutrality requirements. Thus, we further condition our approval of the transfer of the NANPA functions to NeuStar on the requirement that the organizational structure of NeuStar, the voting trust, and the Board of Directors be maintained during NeuStar's term as the NANPA. Any private agreements made between the parties concerning the transfer must be made consistent with the terms and conditions set forth in this order. Our approval of the proposed transfer is subject to the parties' acceptance of all of the foregoing conditions.

38. We find that the parties' proposal for transfer of the NANPA functions, subject to the conditions enumerated above, meets the Commission's neutrality requirements. NeuStar must accept, in writing, all of the foregoing conditions within 30 days of the date of release of this order. Upon consummation of the parties' transfer of the NANPA functions to NeuStar and written confirmation of acceptance of the conditions, NeuStar will be deemed the appointed NANPA. NeuStar's appointment as the NANPA is in the public interest because of the need for a seamless transition to ensure a lack of interruption of the numbering administration process, given the widespread occurrence of area code exhaust and the industry's continuing need for a smoothly functioning numbering allocation system in this era of competition in all telecommunications markets. We fully expect NeuStar to continue to serve as the NANPA in compliance with the Requirements Document for the remaining term of the agreement. Should NeuStar in the future violate our neutrality rules, or if NeuStar's performance falls below the level required under the agreement, we will reevaluate NeuStar's fitness to serve as the NANPA, and consider taking steps to disqualify NeuStar as the

NANPA, if necessary, in accordance with our pronouncements in the *NANP Administration Third Report and Order* and with the findings set forth in this Order.

39. We note that the current NANPA contract will expire in November of 2002. We, along with the NANC, are in the process of formulating the provisions of the new Requirements Document, which will contain the selection criteria and responsibilities of the next NANPA. Besides taking into account current trends in the numbering arena, we will also take a fresh look at our selection criteria. Among the factors that are under consideration as relevant selection criteria is a specific commitment by the designated NANPA to adhere to the neutrality standards throughout the entire term of its contract. We will also consider other factors, such as an entity's commitment not to invest in telecommunications service providers and not to become a telecommunications service provider, as well as an entity's current or future financial interest and involvement in the telecommunications industry.

CONCLUSION

40. We conclude that Lockheed must obtain our prior approval before transferring the NANPA functions. We further find that Lockheed currently is in violation of our neutrality requirements but may cure its violation by transferring the NANPA functions to an entity that meets the neutrality requirements. Finally, we find that NeuStar, as currently structured and with the additional safeguards imposed herein, is in compliance with our neutrality criteria. Thus, we approve the transfer of NANPA functions to NeuStar, subject to the terms and conditions enumerated herein, for the remainder of the current appointment term.

ORDERING CLAUSE

41. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i), and 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 251, and section 52.12 of the Commission's rules, 47 C.F.R. § 52.12, this ORDER is hereby ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

APPENDIX A

NEUSTAR CODE OF CONDUCT

1. NeuStar will never, directly or indirectly, show any preference or provide any special consideration to any company that is a telecommunications service provider, which term as used herein shall have the meaning set forth in the Telecommunications Act of 1996.
2. No shareholder of NeuStar shall have access to user data or proprietary information of the telecommunications service providers served by NeuStar (other than access of employee-shareholders of NeuStar that is incident to the performance of NANPA and LNPA duties).
3. Shareholders of NeuStar will ensure that no user data or proprietary information from any telecommunications service provider is disclosed to NeuStar (other than the sharing of data incident to the performance of NANPA and LNPA duties).
4. Confidential information about NeuStar's business services and operations will not be shared with employees of any telecommunications service provider. NeuStar shareholders will guard their knowledge and information about NeuStar's operations as they would their own proprietary information.
5. No person employed by, or serving in the management of any shareholder of NeuStar will be directly involved in the day-to-day operations of NeuStar. No employees of any company that is a telecommunications service provider will be simultaneously employed (full-time or parttime) by NeuStar.
6. Warburg Pincus will not control more than 40% of NeuStar's Board.
7. No member of NeuStar's board will simultaneously serve on the board of a telecommunications services provider.
8. No employee of NeuStar will hold any interest, financial or otherwise, in any company that would violate the neutrality requirements of the FCC or the NPAC Contractor Services Agreements (the Master Agreements).
9. NeuStar will hire an independent party to conduct a neutrality review of NeuStar, ensuring that NeuStar and its shareholders comply with all the provisions of this Code of Conduct. The neutrality analyst will be mutually agreed upon by NeuStar, the FCC' NANC and the LLCs. The neutrality review will be conducted quarterly. NeuStar will pay the expenses of conducting the review. NeuStar will provide the analyst with reasonable access to information and records necessary to complete the review. The results of the review will be provided to the LLCs, to the North American Numbering Council and to the FCC and shall be deemed to be confidential and proprietary information of NeuStar and its shareholders.

**DISSENTING STATEMENT OF
COMMISSIONER HAROLD FURCHTGOTT-ROTH**

Re: Request of Lockheed Martin Corporation and Warburg, Pincus & Co. for Review of the Transfer of Lockheed Martin Communications Industry Services Business, CC Docket No. 92-237.

I respectfully dissent from the Commission's adoption of an order approving the transfer of North American Numbering Plan administrative functions from Lockheed Martin IMS Corporation ("Lockheed") to an affiliate of Warburg, Pincus & Co. ("Warburg"), the investment firm. Although it is clear that the parties have gone to great effort to make the transaction consistent with our neutrality requirements, I do not believe that the transfer comports with our rules.

The Commission's rules require that the North American Numbering Plan Administrator not be aligned with any particular telecommunications industry segment. 47 C.F.R. § 52.12. Warburg itself plainly *is* aligned with several telecommunications industry segments. As of June 1999, Warburg reported that approximately 12 percent of its assets (or around \$780 million) were invested in telecommunications service providers, including Four Media Company (in which it holds a 50.6 percent interest); Covad Communications Company (20 percent interest); Primus Telecommunications Group, Inc. (14 percent interest); Global Telesystems Group, Inc. (2 percent interest); NTL Telecommunications, Inc. (0.5 percent interest); and a European joint venture (\$6 million investment). These investments disqualify Warburg itself from administering the North American Numbering Plan.

Lockheed and Warburg have proposed to set up a new company, Neustar, Inc. ("Neustar"), to administer the North American Numbering Plan. Neustar will be owned by an affiliate of Warburg (Warburg, Pincus Equity Partners, or "WPEP," which will own a 9.9% interest); a voting trust owned by WPEP (59% interest); Neustar management (28.1%); and Lockheed (3%).

I am skeptical whether establishing a so-called "separate affiliate" would ever be sufficient to alleviate the neutrality concerns raised by a transfer of this sort, where the parent company has telecommunications investments as extensive as Warburg's. I am even more skeptical, however, that under the particular circumstances here, Neustar will be a neutral administrator of the North American Numbering Plan. It appears to me that Warburg will, as a practical matter, retain significant ability to influence and control Neustar, and that it will ultimately control the voting trust that owns the majority of Neustar shares.

Among other things, Warburg will exercise significant control over the Neustar board of directors. Three members of the initial five-member Neustar board of directors will be aligned with Warburg, since two Warburg representatives and the Warburg-nominated Neustar CEO will serve on the initial board. Warburg will also control who serves as the two

“independent” directors on the Neustar board, since no independent director can be selected without the approval of one of the Warburg representatives and since the Warburg-nominated Neustar CEO will nominate the independent directors. In addition, Warburg will ultimately control the voting trust. The Warburg-dominated board of directors of Neustar will have the power to remove trustees of the voting trust without cause and to select successor trustees, and the appointment of a successor trustee must be approved by one of the Warburg board members.

Under these conditions, I find it impossible to conclude that Neustar will be a neutral entity, truly independent of Warburg’s influence. Consequently, I believe that the Commission’s approval of the transfer of North American Numbering Plan administrative functions to Neustar violates our rules.