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March 13, 2000

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By Messenger

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

Re: **EX PARTE**
CC Docket No. 99-200; CC Docket No. 92-237

Dear Ms. Salas:

On March 10, 2000, Len Sawicki, Greg Roberts, and the undersigned, all representing NeuStar, Inc. ("NeuStar"), met with Dorothy Attwood, legal advisor to Chairman Kennard; and attended a teleconference with Sarah Whitesell, legal advisor to Commissioner Tristani, to discuss the selection process for a nationwide pooling administrator. Specifically, the representatives focused on the attached presentation. The representatives also provided a copy of the attached NeuStar materials to Kyle Dixon, legal advisor to Commissioner Powell. The meetings occurred prior to the release of the Commission's agenda for the March 16, 2000 open meeting.

Pursuant to Section 1.1206(b)(1) of the Commission's rules, an original and three copies of this letter are provided to the Secretary for inclusion in the record in the above-captioned proceeding.

Very truly yours,

Cheryl A. Tritt
Counsel to NeuStar, Inc.

Attachment

cc: Dorothy Attwood
Sarah Whitesell
Kyle Dixon

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National Pooling Administration

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NeuStar is the leading neutral third-party administrator to the telecommunications industry

- NeuStar (formerly Lockheed Martin CIS) has been the NANPA since 10/97
  - Selected via a competitive bid process over Mitretek, Bellcore (now Telcordia), and CCMI.
  - NANC recognized that (NeuStar) offered the "potential to achieve synergy from the future consolidation of numbering administration systems and processes (*e.g.*, number pooling)."

- NeuStar is the only Interim Pooling Administrator for the State Trials
  - Illinois - 847 NPA - pooling for nearly 18 months; trial expanded to NPAs 630, 312, and 733
  - New York - 212 and 718 NPAs - pooling for over a year; trial expansion to NPAs 516 and 631
  - Selected as Interim Pooling Administrator for Maine, California, Texas, New Hampshire, and Massachusetts

- NeuStar is the Local Number Portability Administrator for North America

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Thousand Block Pool Administration is NANP Resource Administration

- Thousand Block (1,000 number block) Pool Administration is:
  - A modification to NANP administration, not a new independent function that is easily separable
  - An extension of CO Code (10,000 number block) Administration -- Differs primarily in the size of NANP resource allocated.
  - An important facility to provide effective and improved access to NANP resources to the industry—a key of objective of NANPA is to ensure efficient access and availability of NANP resources to all industry participants

- The similarities between the administration of both NANP resources (CO codes and thousand blocks) are striking:
  - The application, confirmation, and reclamation forms of each are very similar.
  - The underlying workflow and processing -- receive a resource request, assign the resource within the allotted timeframe, enter assignment information in RDBS/BRIDS, and confirm the request -- for each resource is virtually identical.
  - Other collateral responsibilities, such as data collection, forecasting, data security, and reporting, for each resource are virtually identical as well
  - Automated systems for each resource are analogous and interdependent.

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Separating Thousand Block Pool Administration from NANP Resource Administration will create significant problems

- Industry Guidelines mandate that all NANP resource requests (CO codes and thousand blocks) go through the Pooling Administrator -- separating thousand block pool administration from NANPA will introduce inefficiencies and extra overhead between the administration of these NANP resources

- To separate Thousand Block Pooling Administration would result in higher costs to the industry as a result of the duplication of collateral functions and their supporting systems and infrastructure.

- Critical NANPA functions like NPA relief planning and NPA exhaust projections could be compromised because of the potential for different and inconsistent resource usage analysis

- Future inefficiencies will be introduced for any changes to existing NANPA duties that span NANP resources such as forecasting and utilization.

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Having NANPA perform Thousand Block Pool Administration is in the Public Interest

- Over 18-months of careful and thoughtful deliberations by NANC -- a body comprised of service providers, State Public Utility Commissions, and other groups:
  - Vote in June 1998 Meeting -- NeuStar and Telcordia (then Bellcore) both made presentations at this meeting -- Telcordia's arguments were rejected
  - Vote in July 1999 Meeting
  - Vote in February 2000 Meeting

- NANC has resoundingly concluded that NANPA should be the National Pooling Administrator

- Ordering NANPA as the National Pooling Administrator ensures:
  - A timely roll-out of national thousand block pooling
  - A low-risk roll-out of national thousand block pooling -- NeuStar is the only Pooling Administrator in the nation, guaranteeing a successful roll-out.
  - Smooth transition from State Pooling Trials to a National Solution
  - Avoidance of additional costs to transition existing State Pooling Trials to a National Solution
  - Limited burden on State PUC's for launching State Pooling Trials and proceedings.

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A Competitive Procurement of National Pooling Administration has many drawbacks

- A competitive procurement is contrary to the Industry's and NANC's recommendation for NANPA to be the National Pooling Administrator
  - Record is clear -- NANPA should be the National Pooling Administrator
  - Compelling rationale -- Thousand Block Pooling Administration is NANP Resource Administration, not a distinct or easily separable responsibility
- A competitive procurement will lead to certain delay of National Pooling -- needlessly hastens the exhaustion of numbering resources
  - INC Guidelines will have to be rewritten -- current requirements took about 18 months
  - NANC Requirements Document will have to be rewritten
  - Industry estimates a delay of up to 12 months
  - Service providers will be shackled with increased costs resulting from a delay
- A competitive procurement could result in all the drawbacks associated with breaking NANP administration -- costs are increased, efficiencies are lost, service will suffer

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Federal Procurement Laws Do Not Apply To The FCC's Designation Of a Pooling Administrator

- Federal procurement laws apply only when a federal agency acts as a commercial party contracting for procurement:
  - — Competition in Contracting Act ("CICA")
  - — Federal Acquisition Regulations ("FAR")
- A federal agency's "designation" of a private entity pursuant to statute to perform certain functions is not a procurement.
  - — *See, e.g., United States v. Citizens & Southern Nat'l Bank*, 889 F.2d 1067 (Fed. Cir. 1989) (the Federal Circuit's lead case on designation)
  - — *See also* opinions by the D.C. Circuit, D.C. District Court and the GSA Board of Contract Appeals.
- The Commission is designating a Pooling Administrator pursuant to Section 251(e) of the Communications Act of 1934:

  > "The Commission shall create or <u>designate</u> one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis."

- Section 251(e) explicitly directs the Commission to make a designation -- it does not authorize a procurement.
- Because the Commission is acting in its regulatory capacity, not as a commercial party contracting for a procurement, federal procurement laws do not apply. Rather, the FCC is exercising its organic authority to determine what best serves the public interest.
- Competitive bidding conflicts with the need for the urgent and cost-effective action contemplated by the regime Congress expressly authorized in section 251(e).

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Modifying NANPA Duties To Include Pooling Administration Is Proper

- A new competitive solicitation is inappropriate for a modification of existing duties.
  - *See, e.g., AT&T Comm., Inc. v. Wiltel, Inc.*, 1 F.3d 1201 (Fed. Cir. 1993) (the Federal Circuit's lead case on modification, which sets forth well-established principles).
  - "CICA, however, does not prevent modification of a contract by requiring a new bid procedure for every change. Rather only modifications outside the scope of the original competed contract fall under the statutory competition requirement."
- A modification may be as broad as the initial competition.
  - "The cardinal change doctrine [which Telcordia cites] asks whether a modification exceeds the scope of the contract's changes clause; this case asks whether the modification is within the scope of the competition conducted to achieve the original contract."
  - "The analysis thus focuses on the scope of the entire original procurement in comparison to the scope of the contract as modified. Thus a broad original competition may validate a broader range of later modifications without further bid procedures."
- The major factor is whether the bidders should have reasonably anticipated the modification.
  - "A modification generally falls within the scope of the original procurement if potential bidders would have expected it to fall within the contract's changes clause."

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Competitive Selection Of NANPA Anticipated Pooling Administration

- All bidders competing for the NANPA assignment should have reasonably expected NANPA to include Pooling Administration.
- The Commission asked NANC to consider: "What measures should be taken to conserve numbering resources?" and "What number resources, beyond those currently administered by Bellcore [now known as Telecordia] should the NANP Administrator administer?"
- NANC found that Lockheed offered the "potential to achieve synergy from the future consolidation of numbering administration systems and processes (*e.g.*, number pooling)."
- The Commission designated Lockheed as the new NANPA, based in significant part on the finding that the "record demonstrates that Lockheed . . . can bring efficiency and synergy advantages to number administration activities."
- The NANC Working Group concluded that the function of thousand-block number pooling is a CO-code administration function and an extension of the NANPA duties and recommended modification of the NANPA requirements and without a second round of competitive bidding.
- On June 23-24, 1998, NANC reviewed the NANPA Working Group recommendations regarding implementation of thousand-block number pooling. As part of that deliberation, NANC considered presentations by Lockheed and BellCore (now Telecordia).
- NANC "reached consensus that the industry should not bid the 1000's block administration function, and that it is to be treated as an extension of the existing contract with [Lockheed]/NANPA."
- Subsequent NANC votes in July of 1999 and February of 2000 support this conclusion.
- Consequently, as a matter of law and fact, NANPA duties may properly be modified to include Pooling Administration.

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Conclusion

- Thousand Block Pool Administration is NANP Resource Administration, not a different and easily separable function. NANPA is charged to ensure efficient access and availability of all NANP resources to all industry participants
- NANC has resoundingly concluded, without objection, that NANPA should be the National Pooling Administrator
- Any Separation of Thousand Block Pooling Administration from NANPA will result in increased costs, inefficiencies, and decreased service.
- A competitive procurement will cause a substantial delay in the deployment of national pooling
- The FCC is well within its organic authority to designate a pooling administrator without a competitive procurement
- The FCC can modify NANPA duties to include thousand block pool administration without further competitive solicitation
- The FCC should order NANPA to be the National Pooling Administrator