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March 4, 2004

Filed Electronically

Ms. Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
TW-A325
Washington, D.C. 20554

Re: Initial Response of North American Portability Management LLC to Various Ex Parte Presentations of Telcordia Technologies (Docket No. 95-116), Direct Marketers Association (Docket Nos. 95-116, 02-278) and VeriSign Communications Services (Docket No. 02-278).

Dear Secretary Dortch:

Reasons for this Correspondence

This law firm is engaged as outside general counsel to the North American Portability Management LLC (the "NAPM LLC"). It has come to my attention, as general counsel for the NAPM LLC, that a series of separate, recent ex parte presentations by third parties have been made to the Commission which challenge the decisions of the NAPM LLC and question the operations of the NAPM LLC with respect to supervising and overseeing the provision of local number portability services.

The reasons for this correspondence are (1) to advise the Commission that the NAPM LLC is currently engaged in discussions with all the parties that have made the various ex parte presentations in an effort to resolve the disagreements set forth in those presentations, (2) to advise the Commission that none of those discussions are at an impasse and (3) to alert the Commission that the NAPM LLC intends to respond to each of those ex parte presentations in more detail at a later date.

Change from Past Advice Not to Respond to Ex Parte Presentations

As you are aware, the NAPM LLC is a successor to the seven regional limited liability companies that were endorsed by the Commission in the Second Report and Order, FCC 97-289 (the "Second Report and Order"), and subsequently, as the contracting entities responsible for supervising and overseeing the administrator providing local number portability services in the seven service areas comprised of the states, territories and possessions of the United States. As you also know, those local number portability services are currently being provided by NeuStar, Inc. ("NeuStar"), as the administrator or Contractor, under seven separate Master Agreements, all with the NAPM LLC as the contracting entity or Customer, for the benefit of individual service providers, referred to as Users.

In the past, even if parties which disagreed with the decisions of the NAPM LLC chose to bring their disputes directly to the Commission, I have advised my client, the NAPM LLC, to adhere to the recommendations of both the Commission and the North American Numbering Council ("NANC"), set forth in the Second Report and Order, that encourages the resolution of disagreements regarding the decisions of the LLC and the provision of local number portability services without immediate appeal to the Commission. As the Commission itself stated in the Second Report and Order:

> The Commission strongly encourages all parties to attempt to resolve issues regarding number portability deployment among themselves and, if necessary, under the auspices of the NANC. If any party objects to the NANC's proposed resolution, the NANC shall submit its proposed resolution of the disputed issue to the Commission as a recommendation for Commission review. In light of the parties' record of successful cooperation to implement number portability, we believe that this approach will enable the parties to resolve such issues most efficiently and effectively. Such issues may include, but are not limited to, amendments to or interpretations of the NANC's recommendations approved in this order, disputes regarding the LLCs' oversight and management of the number portability database administrator, or any other matters involving the administration of local number portability.

Accordingly, in the past, I have advised the NAPM LLC that it should not respond to ex parte presentations and, thereby, escalate the disagreements with such parties, but, instead, should continue to attempt to resolve those disagreements in good faith and with diligence under the delegated authority granted pursuant to the Commission's orders and subject to oversight by and reporting to the NANC and the Commission. With a genuine desire to honor the recommendations of the Commission and the NANC summarized above, the NAPM LLC has, up until now, steadfastly refused to be drawn into an exchange of ex parte communications and presentations with parties who

may have chosen not to seek resolution of their disagreements with the NAPM LLC through this Commission-recommended process - - even if that meant allowing inaccurate and unbalanced presentations to remain without an ex parte response from the NAPM LLC.

However, the seriousness of some of the contentions in these recent ex parte presentations compels me now, on behalf of the NAPM LLC, to respond. In addition, it now seems prudent explicitly to advise the Commission of the status of the on-going efforts of the NAPM LLC to resolve all of these disagreements with each of the third parties who have made these recent ex parte presentations, so that the Commission is not left with the inaccurate impression that the resolution of any of these disagreements is at an impasse. To the contrary, I assure the Commission that the NAPM LLC has investigated all contentions made in the ex parte presentations, has made proposals to resolve all the disagreements and is still in discussions with all parties to resolve the disagreements.

These Ex Partes All Involve Confidential User Data Questions

All of these recent ex parte presentations share, at their core, a disagreement regarding access to data contained in the NPAC/SMS itself and administered by NeuStar as the Contractor or administrator pursuant to the seven separate Master Agreements, which are supervised and overseen by the NAPM LLC, as the contracting entity or Customer. Telcordia Technologies ("Telcordia") and the Direct Marketers Association ("DMA") separately contend that NeuStar's refusal to provide the requested data is improper, and each seeks the Commission's direction to order NeuStar to provide the data to them. In its ex parte, VeriSign, Inc. ("VeriSign") advised the Commission that it soon will offer a commercial service to allow telemarketers to avoid violating the prohibitions contained in the Telephone Consumer Protection Act of 1991 (the "TCPA"), and, based upon discussions with VeriSign counsel, I anticipate objections from VeriSign if NeuStar were to agree to make data contained in the NPAC/SMS directly available to DMA and its constituents.

The differing positions of the various third parties making these ex parte presentations vividly illustrates the challenge facing the NAPM LLC in its efforts to balance the asserted need for specific data or elements of data contained in the NPAC/SMS against both (1) the explicit prohibitions contained in the Master Agreements and User Agreements against disclosure of User Data and Confidential Information and (2) the reasonable and critical expectations of service providers regarding the confidentiality of the User Data that they have contributed to the NPAC/SMS. To too quickly accede to a third party's demand for NPAC/SMS User Data without ensuring the permissibility of that disclosure under the Master Agreements, User Agreements and applicable regulatory orders could likely set an irresponsible precedent, no matter how great the "pressure" from the demanding third party. Further, acceding to such demands prematurely could also subject the administration of the NPAC/SMS to challenge from parties offering alternative commercial services and who could contend that the disclosure of such data is impermissible. These are hard questions that demand careful and deliberate consideration.

NAPM LLC's Continuing Investigations and Discussions with Third Parties

The NAPM LLC takes seriously its charge from the Commission and the NANC to act as a neutral and impartial steward in supervising and overseeing the administration of local number portability and of the NPAC/SMS, no matter how difficult. At all times the NAPM LLC strives to ground its decisions directly within the agreements and limitations embodied in the Master Agreements and User Agreements and in accordance with the Commission's rules and orders and the NANC's directions and guidelines.

It is inevitable that some third parties on either side of a disagreement may challenge the decisions of the NAPM LLC as that steward and criticize the operation of the NAPM LLC. Nonetheless, the NAPM LLC will continue to follow the Master Agreements and User Agreements and to measure its conduct against the duties and responsibilities established by the Commission and the NANC, and not by how much "pressure" third parties attempt to bring to bear. To do anything less would be to shirk the responsibilities and duties which the Commission itself and the NANC have placed upon the NAPM LLC. I assure the Commission that this is not hyperbole; it is the guiding and fundamental principle upon which the NAPM LLC has operated since its formation.

Accordingly, the Commission is hereby advised that the NAPM LLC is in direct discussions with Telcordia and has suggested a potential solution that the NAPM LLC believes should satisfy Telcordia's requests. The NAPM LLC has also investigated Telcordia's contentions regarding alleged non-neutral conduct, and the NAPM LLC has concluded that such conduct did not occur. The NAPM LLC has also advised Telcordia of that conclusion and of the facts upon which that conclusion is based. It is hoped that a solution to Telcordia's request will be imminent.

With respect to DMA's request for certain elements of User Data to allow telemarketers to comply with the TCPA, the NAPM LLC and NeuStar, with notice to the DMA, have drafted and are currently revising a separate agreement to allow the limited dissemination of the requested User Data elements in a manner allowable under the Master Agreements and the User Agreements and with sufficient protections to ensure the continued confidentiality of such vital and sensitive User Data. It is hoped that this solution, too, will be imminent.

Finally, the NAPM LLC, in an effort proactively to anticipate the concerns of third parties, has contacted VeriSign to better understand the purpose of its recent ex parte and to explain the role and position of the NAPM LLC and the operation of the Master Agreements and User Agreements with respect to User Data and the conduct of NeuStar as the NPAC/SMS administrator. It is hoped that this contact will lead to a greater understanding of the emerging issues before they become disagreements.

The Next Steps

Although the principal purpose of this communication was to advise the Commission of the on-going efforts of the NAPM LLC with respect to the disagreements which are the subject of these several ex parte presentations, the NAPM LLC realizes that its efforts on these matters are not yet complete. Therefore, the NAPM LLC fully expects to report again on the conclusion of these matters and to more fully respond to some of the contentions contained in those ex parte presentations, which the NAPM LLC believes are not consistent with our understanding.

In the meantime, as outside general counsel for the NAPM LLC, I stand ready to answer any additional questions and to provide any requested information. The NAPM LLC and its constituent members recognize the dynamic and evolving nature of the environment in which the NAPM LLC, the members themselves, Users, third parties and the NPAC/SMS itself (and associated porting) are operating. But they also genuinely believe in the effectiveness of the NAPM LLC process and structure to help manage that evolution.

Pursuant to the Commission's rules, this ex parte letter will be filed electronically for inclusion in the public record of the above referenced proceedings. Please contact me directly at 303-592-8354 or at the electronic or physical address shown on this letterhead if you have any questions.

Respectfully submitted

Berenbaum, Weinshienk & Eason, P.C.

By: Dan A. Sciullo