

LUKAS, NACE, GUTIERREZ & SACHS
CHARTERED
1111 NINETEENTH STREET, N.W.
SUITE 1200
WASHINGTON, DC 20036
(202) 857-3500

WRITER'S DIRECT DIAL
(202) 828-9469

July 29, 2004

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204
Washington, DC 20554

**Re: *Ex Parte* Communication by the Rural Cellular Association regarding
Request of NeuStar, Inc.
CC Docket No. 92-237**

Dear Madam Secretary:

In accordance with Section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. Section 1.1206(b)(1), this letter is submitted on behalf of the Rural Cellular Association ("RCA") as a written *ex parte* presentation in connection with the above-captioned matter.¹

RCA is an association representing the interests of approximately 100 small and rural wireless licensees that provide commercial services to subscribers in numerous small and rural markets throughout the nation.

NeuStar, Inc. ("NeuStar") requests to be released from certain of the neutrality and conflict of interest rules imposed upon it in its role as North American Numbering Plan Administrator ("NANPA"). These rules require prior FCC approval for any changes in the NANPA's ownership and for other significant changes in its organization.

RCA's members are mostly small rural wireless carriers that compete with larger regional and national wireless carriers, typically in rural areas. Prior to the creation of the NANPA in 1996, RCA members generally had to depend on the Bell Companies for access to numbering resources. We are therefore appropriately concerned that if the public sale of stock in the

¹ Letter dated April 14, 2004 from Richard E. Wiley, Counsel for NeuStar, Inc. to Michael K. Powell, Chairman, Federal Communications Commission, CC Docket No. 92-237. *See* Public Notice, DA 04-1041, rel. April 22, 2004, err. May 7, 2004, *Comment Sought on NeuStar, Inc. Request to Allow Certain Transactions Without Prior Approval and to Transfer Ownership; Pleading Cycle Established*.

NANPA could result in certain entities gaining undue influence over the numbering administration process, any unfair advantages could well come at the expense of smaller carriers such as RCA's members.

RCA therefore urges the Commission to consider the present request carefully to ensure that, if any relief is granted from the current prior approval requirements, the agency can still be sure of the crucial neutrality of the NANPA. As other commenters have pointed out in this proceeding, absent appropriate restrictions on the ownership and governing board of even a company whose stock is publicly traded, other neutrality requirements may not be sufficient to guarantee the NANPA's continued neutrality.

For example, the Commission should not grant relief that would allow for greater representation by Warburg Pincus & Co. ("Warburg") on the board of directors of NeuStar. NeuStar seeks authority to make "[c]hanges to the Board's structure or size, provided that a majority of the directors are unaffiliated with Warburg."² Currently, Warburg is limited to two seats on NeuStar's five-member board. If this relief is granted, Warburg could hold three seats on a seven-member board, four seats on a nine-member board, or even five seats on an eleven member board, without offending this new requirement. All of these opportunities could increase the risk of undue influence. As the Commission's own experience often demonstrates, it is harder to find one vote needed for a majority from among three non-affiliated directors than it might be to find that same vote from among four, five or seven other directors. Particularly as Warburg's ownership percentage might decrease, there is no reason why the Commission should, without prior consideration of the facts involved in each instance, grant blanket relief from this important control on neutrality.

Just as the Commission must protect against granting relief that would permit Warburg's influence in the NANPA to grow inappropriately, the Commission also should ensure that the restrictions on aggregate ownership by any particular *class* of providers are maintained in a publicly traded NANPA. In the past, the Commission has recognized that a group of service providers' interests can be so closely aligned that they should be treated collectively as a single entity under the neutrality requirements.³ And while NeuStar has suggested that federal securities laws might protect against conspiratorial combining of interests, RCA does not believe that any element of the requested relief would guard against a group of aligned service providers each purchasing a 9.9% interest and, simply by voting their shares in their own individual interests, collectively holding the ability to impose undue influence on the Board of Directors and management of the NANPA. This outcome could occur without any explicit or tacit collusion among the carriers, thereby increasing the need for structural safeguards against it.

RCA's members are small carriers dependent on equal access to numbering resources. Given their size, they also are dependent upon the Commission to ensure the NANPA's neutrality. We hope that the Commission will take this responsibility seriously as it considers the present request.

² NeuStar April 14, 2004 letter at 6.

³ *Toll-Free Service Access Codes; Database Services Management, Inc. Petition for Declaratory Ruling; Beehive Telephone Co. Petition for Declaratory Ruling*, 15 FCC Rcd 11939 (2000) ("DSMI Order").

Sincerely,

Filed Electronically

David L. Nace
Counsel for Rural Cellular Association

cc (by email): Christopher Libertelli
Matthew Brill
Jessica Rosenworcel
Daniel Gonzalez
Scott Bergmann
William Maher
Diane Griffin
Vickie Robinson
Cheryl Callahan
Sanford Williams
Pam Slipakoff
Richard E. Wiley
Best Copy and Printing, Inc.