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by increasing the charge per TN Porting Event under Rate Card 3 and the Effective Rate under Rate Card 4 by Nine Cents (\$0.09) (such added amount known as the "Increased Charge Amount")."⁴

"Customer" and "Subscribing Customer" are references to the contracting entity, that is, the NAPM LLC, and not to Users, like Telcordia. The conduct of Users, no matter what they do, will have no effect on this so-called "triggering clause." Furthermore, the action of the Customer and Subscribing Customer, (that is, the NAPM LLC in each Service Area) is further limited to only specified "Official Customer Action," so that enormous flexibility is retained to seek competition and to consider various alternative solutions as time proceeds.

2. Amendment No. 57 is not in any way anti-competitive, nor does it in any way alter the contractual flexibility of the Master Agreements to allow the NAPM LLC to consider other vendors, new solutions or improving technology or to take advantage of changing market conditions to obtain material price reductions.

Contrary to the allegations of Telcordia, Amendment No. 57 was expressly drafted to deliver significant current transaction price reductions and future anticipated savings, without altering the flexibility of the Master Agreements. Telcordia asserts that Section 8.3 of Amendment No. 57 regarding renegotiation of the pricing provisions is anti-competitive "on its face," and that "the entire industry will potentially be pushed into a numbering solution using legacy technology..." Telcordia is wrong; Amendment No. 57 was drafted to avoid those results.

- a. Under Amendment No. 57, even upon the occurrence of a Customer Modification Event, the Price Per TN is never more than under the Master Agreements before Amendment No. 57, therefore, it is not anti-competitive and it is not a disincentive to potential adoption of alternate solutions or improved technology.

Section 8.3 of Amendment No. 57 provides no contractual disincentive to competition or to consideration and adoption of better or more innovative technologies by the NAPM LLC, in one Service Area, in multiple Service Areas, or in all Service Areas. Section 8.3 in no way condemns the NPAC/SMS in any Service Area to legacy technology. Section 8.3 merely provides that the substantial transaction price reductions obtained by Amendment No. 57 will be discontinued and the transaction prices will on a going forward basis only revert to the current

4. A complete excerpt of Section 8.3 is attached hereto as Exhibit A. There is a corresponding provision, Section 8.4 providing for a Downward Triggering Event upon the occurrence of a Contractor Triggering Event.

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pricing (which existed prior to Amendment No. 57) in the event of a so-called Customer Modification Event. Both competition and the ability to adopt new solutions are preserved to the exact same extent as they existed before Amendment No. 57, without change.

In addition, although Amendment No. 57 recites an extension from 2011 until June 30, 2015, Section 8.3 expressly provides that the loss of the price reductions under Amendment No. 57 will not occur as a result of conduct by the Customer of the Subscribing Customer after December 31, 2011; therefore, in effect, there is not even a loss of the substantial Amendment No. 57 price reductions if a triggering event occurs after December 31, 2011.

Section 8.3 states the following:

“For purposes of this Section 8.3, a “Customer Modification Event” shall mean, subject to Section 8.3(c) below, any Official Customer Action with respect to the following events that occurs on or after the Amendment Effective Date, but before January 1, 2012...” (Emphasis Added).

Essentially, Amendment No. 57 retains the existing functional contractual duration and term but delivers current and future price reductions greater than the existing Master Agreements in effect before Amendment No. 57. This is in no way contrary to any representations or obligations of the NAPM LLC or its officers, despite the allegation of Telcordia in the Telcordia Letter, referencing a statement of Ms. Karen Mulberry as NAPM LLC co-chair at a May 2005 meeting of the NANC.

Telcordia somehow intends to imply that the NAPM LLC’s adoption in September 2006 of Amendment No. 57 contradicts statements made by Ms. Mulberry in May 2005, thereby dashing the expectations of Telcordia and the “industry” and deterring competition. That is simply false. As already discussed, Amendment No. 57 does not deter competition, and Telcordia knew full well that the NAPM LLC was not currently, in 2005 or 2006, contemplating the issuance of an RFP, RFI or other solicitation of bids. Amendment No. 57 does not contradict Ms. Mulberry’s statements or any representations made by officers of the NAPM LLC.

Telcordia does not accurately or completely cite the exchange referred to at the May 2005 NANC meeting. Although the minutes are a paraphrased summary recitation of the exchange, the complete summary recitation of that particular exchange makes clear that Ms. Mulberry represented that she did not believe that there currently existed any requirement to consider potential NPAC/SMS contractors at this time. The complete excerpt of the exchange truncated

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by Telcordia is as follows:

“Mr. Gray asked Ms. Mulberry to confirm that when a new contract period is about to begin, the NAPM LLC will put forth an RFP and go through a competitive process and that at the current time, there are no items on the agenda that require the NAPM LLC to evaluate potential vendors. Ms. Mulberry agreed.”

Amendment No. 57 was negotiated in 2006, over 4 years before the 2011 expiration date of the then-existing Master Agreements. In addition, those same NANC meeting minutes make absolutely clear that Ms. Mulberry stated that the NAPM LLC was not currently considering issuance of an RFP or similar solicitation of vendor proposals, despite dogged questioning by Telcordia’s legal counsel.⁵

Furthermore, as a result of direct communication with the NAPM LLC’s co-chairs, Telcordia was also expressly told that the NAPM LLC was not considering the issuance of an RFP or similar solicitation of vendor proposals, but would both consider meaningful unsolicited presentations and provide notice to Telcordia when and if the NAPM LLC ever did decide to issue an RFP or similar solicitation.⁶ Therefore, despite the innuendos of Telcordia, the conduct of the NAPM LLC has always been consistent with its statements, and neither Telcordia nor any other industry members had or should have had any expectation that the NAPM LLC would or was about to issue an RFP or similar solicitation during 2005 or 2006, or was in any way required to issue such an RFP or similar solicitation as a condition to modify, amending or improving the then-current Master Agreements.

5. The official minutes of the May 17, 2005 NANC meeting are attached hereto as Exhibit B. The following excerpt illustrates the representations of Ms. Mulberry:

“Ms. Mulberry responded that there is currently no interest in the NAPM LLC to go through a process to develop an RFP to solicit proposals. Mr. Slomin questioned whether the NAPM LLC is interested in competitive bidding. Ms. Mulberry responded not at this time. She stated that it has a vendor under contract. Ms. Mulberry stated that the NAPM LLC will consider unsolicited proposals. She indicated that the NAPM LLC has two proposals that it is reviewing at this time. Mr. Slomin stated that Ms. Mulberry’s statement that the NAPM LLC is not interested in soliciting competitive bids is why Telcordia and other vendors should be concerned. He further stated that the NANC should consider bids, because it is losing the benefits of competition. Ms. Mulberry responded that the NAPM LLC has a vendor contract, and there is no reason at this time to void that contract. She further stated that if there are conditions that would warrant voiding the contract, then the NAPM LLC would solicit proposals.”

6. Attached as Exhibit C is a non-confidential e-mail string reflecting those representations by the NAPM LLC and the acknowledgment and understanding by Telcordia.

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- b. Amendment No. 57 retains the two most powerful provisions in the Master Agreements ensuring contractual flexibility to accommodate current and future market, technological and financial changes.

Amendment No. 57 does not diminish potential competition in an Service Area or otherwise lessen the likelihood of the consideration and adoption of improved or more economical solutions or technologies, because it retains the following two fundamental aspects of the Master Agreements: (a) preservation of the legal and operational separateness of the seven separate contracts for the seven United States Service Areas, so that potential competition is preserved across Service Areas; and (b) preservation of the non-exclusivity of the contractual relationship with the current vendor without any required transaction minimums, so that experimentation and potential migration to other vendors or technologies is preserved.

Despite attempts over the years to consolidate the seven separate Master Agreements or to combine the seven separate NPAC/SMSs into a “centralized” solution, Amendment No. 57 continues the NAPM LLC’s insistence upon retaining the seven separate contractual relationships. Therefore, Amendment No. 57 retains the flexibility of seven distinct but coordinated and interoperable contractual arrangements and requires functionally separate and distinct and not centralized solutions under Article 29 of the Master Agreements. Amendment No. 57 thereby preserves the FCC mandate and the ability to entertain competitive but interoperable solutions in the various Service Areas.

Also, despite attempts over the years to require transaction minimums in exchange for price reductions or to grant exclusivity to the vendor, Amendment No. 57 preserves the non-exclusivity memorialized in Article 28 of the Master Agreements. Amendment No. 57 thereby preserves the flexibility at any time to migrate to alternative and improved solutions, either Service Area by Service Area or in any combination.

Amendment No. 57 is not in any way anti-competitive, nor does it in any way alter the contractual flexibility of the Master Agreements to allow the NAPM LLC to continue to consider other vendors, new solutions or improving technology or to take advantage of changing market conditions to obtain material price reductions. It was expressly drafted to deliver significant current transaction price reductions and future anticipated savings, without altering the flexibility of the Master Agreements. That was a goal of the NAPM LLC, and the NAPM LLC believes that that goal was attained.

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3. The NAPM LLC followed all of its processes and procedures and fairly and impartially negotiated, considered and adopted Amendment No. 57 and is continuing to be open to consideration of any improvements to the NPAC/SMS.

The NAPM LLC did not deviate from any of its procedures in negotiating, evaluating and ultimately agreeing to Amendment No. 57 in each of the seven United States Service Areas. In addition, as further evidence of its impartiality and prudence, the NAPM LLC adopted and has followed procedures for the consideration of inquiries from potential vendors and has both allowed Telcordia to make unsolicited presentations before meetings of the entire membership and has established a standing Advisory Committee of the NAPM LLC (called the Vendor Proposal Advisory Committee or the "VPAC") to investigate and to advise the entire membership of the NAPM LLC with respect to all presentations and inquiries from potential vendors.⁷

The NAPM LLC believes that all material information required for a potential vendor to assemble and to present a meaningful presentation to compare to the current NPAC/SMS is available in the public domain without issuance of an RFP, RFI or similar solicitation by the NAPM LLC. The Functional Requirements Specifications are in the public domain; the NAPM LLC operating agreement is in the public domain; and even the Master Agreements are in the public domain. Nonetheless, despite the wealth of this public domain information, in the view of the NAPM LLC, Telcordia has not presented a detailed proposal that would, in the view of the NAPM LLC, warrant a change in contractors. The NAPM LLC has even made this clear to Telcordia without in any way discouraging Telcordia from preparing and presenting such a presentation. In addition, Telcordia's recent change in ownership raised questions that prompted the NAPM LLC to make specific requests regarding Telcordia's neutrality within the meaning of FCC rulings and the Master Agreements.⁸

It is difficult not to view Telcordia's request to the NANC in the Telcordia Letter as anything more than an attempt to circumvent the NAPM LLC's valid processes and its conclusions regarding the current insufficiency of Telcordia's presentations, to date. Nonetheless, despite this attempt by Telcordia, the NAPM LLC stands behind its decision to adopt Amendment No. 57. The NAPM LLC carefully and diligently followed all of its processes

7. A copy of a presentation of the VPAC, redacted to protect a confidential evaluation of several unsolicited potential vendor presentations, is attached as Exhibit D and illustrates the care and diligence with which the NAPM LLC is considering all unsolicited proposals.

8. Attached as Exhibit E is a copy of presentation by Telcordia presented to the full membership of the NAPM LLC in March 2005. That presentation is marked confidential, but is provided to NANC in its role to supervise the administration by the LLCs. Also attached as Exhibit F is a series of letters between the NAPM LLC and Telcordia regarding Telcordia's presentation and additional follow-up questions regarding neutrality.

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under its operating agreement and FCC rulings, including consideration of any and all presentations by Telcordia and other potential vendors, and including careful attention to ensure, as it always does, non-discriminatory access to the NPAC services and continued neutrality of the NPAC contractor, as required by both the Master Agreements and the applicable FCC (and NANC) procedures and requirements.

C. **The NAPM LLC did not exceed any scope or authority regarding NANC Change Order 400.**

Although Telcordia did not make any allegations regarding NANC Change Order 400 in the Telcordia Letter, Mr. Mazzone on behalf of Telcordia reportedly asserted orally at the February 23, 2007, NANC meeting that the NANC should remove those provisions of Amendment No. 57 that mandate certain fields under NANC Change Order 400 to be billable transactions, because that exceeds the scope of the NPAC/SMS. Therefore, in the interest of completeness, that allegation, too, will be addressed here.

Telcordia is wrong that Amendment No. 57 mandates adoption of NANC Change Order 400 and further mandates treatment of those data fields as billable transactions. Amendment No. 57 expressly does not adopt the addition of any data fields not already allowed by approved Statements of Work, nor does it in any way limit or restrict the ability or discretion of the NAPM LLC to approve or to disapprove any future Statement of Work in connection with NANC Change Order 400 or any other change order. Amendment No. 57 simply incorporates for convenience of implementation purposes the billable nature of specified data fields if, only if and when they are included in an approved and executed Statement of Work. The provision has no immediate or current billable effect. It was included to streamline the incorporation of pricing provisions for approved Statements of Work to avoid an alleged "glitch" that the Contractor asserted occurred upon approval and adoption of the Statement of Work incorporating NANC Change Order 399 and the coordination of the pricing with the Exhibit E pricing structure set forth in the Master Agreements. Therefore, Amendment No. 57 is not either beyond the scope of the NPAC/SMS, nor does it usurp the power of any agency regarding the NPAC/SMS.

The relevant section is Section 8.5(c) of the Amendment No. 57. It states as follows:

"(c) Billable Nature of Certain Data Elements

Upon execution by Customer and Contractor of a Statement of Work under Article 13 of the Master Agreement or amendment under Article 30 of the Master Agreement adding any number or combination of the following SV data elements to the NPAC/SMS, such added data elements will be included in the group of SV data fields to which the modify of an Active SV results in a charge (i.e., the TN Porting Event has occurred and is chargeable) under and in

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accordance with Exhibit E:

- (i) "AltSPID" data element in the "Optional Data" field; or
- (ii) any IP-related data elements, regardless of their format or how they are implemented, if they are a member of any number or combination of the following categories:
 - a. a network address to a service provider's gateway for voice service (e.g., voice URI);
 - b. a network address to a service provider's gateway for multi-media messaging service (e.g., MMS URI);
 - c. a network address to service provider's gateway for push-to-talk over cellular service (e.g., PoC URI); or
 - d. a network address to a service provider's gateway for IMS service (IP Multimedia Subsystem) or an interactive session of real-time communication-centric services (e.g., Presence URI).

Except for the billable nature of data elements as set forth in this Section 8.5, the foregoing is not intended to limit either Party's rights with respect to Statements of Work under Article 13 or with respect to amendments under Article 30. The foregoing shall mean, without limitation, that the Customer is not entitled to reject a Statement of Work under Article 13 or an amendment under Article 30 that adds in the NPAC/SMS any of the data elements set forth in and subject to this Section 8.5 on the basis of the billable nature of the data elements. **Additionally, nothing in this Section 8.5 shall be interpreted as approval, as of the Amendment Effective Date under this Amendment of the data elements set forth above in Paragraph (ii).** (Emphasis Added).

Accordingly, Telcordia's assertions are without merit, and there is no reason for the NANC to rescind this provision.

Conclusion

For all the reasons detailed in this letter, Telcordia's assertions and accusations are without merit. Therefore, there is no reason for the NANC to intervene to either rescind all or

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any portions of Amendment No. 57 or to suspend its operation and reconstitute subgroups or committees to further evaluate it. Officers of the NAPM LLC stand ready to respond to any further questions, and I am available at any time if desired.

Sincerely,

BERENBAUM, WEINSHIENK & EASON, P.C.

Dan A. Sciallo

