

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

**The Petition of Telcordia Technologies, Inc.
To Reform Amendment No. 57 and to Order a
Competitive Bidding Process for Number
Portability Administration**)

WCB Docket No. 07-149

**COMMENTS OF THE
NORTH AMERICAN PORTABILITY MANAGEMENT LLC**

The North American Portability Management LLC, a Delaware limited liability management company (the “NAPM LLC”), respectfully submits these Comments to oppose the Petition¹ of Telcordia Technologies, Inc. (“Telcordia”). The NAPM LLC urges the Commission not to grant the relief sought by Telcordia in its Petition. The relief sought by Telcordia is unnecessary and premature, is not in the public interest, and actually risks adversely affecting the consistent quality of service provided to telecommunications customers with respect to the implementation of telephone number portability and pooling² in the seven separate United States former RBOC regions.

1. The Petition of Telcordia Technologies, Inc. to Reform Amendment No. 57 and to Order a Competitive Bidding Process for Number Portability Administration, filed June 13, 2007.

2. Pursuant to Statement of Work No. 15, dated May 7, 1999, NANC Change Order Number 109 was implemented in all United States regions through each of the seven regional NPAC/SMSs (that is, the seven regional Number Portability Administration Centers/Service Management Systems discussed in detail *infra*). NANC 109 encompassed the entire set of changes required to support national standards for number pooling to be accomplished through use of the NPAC/SMS. NANC 109 included Efficient Data Representation (EDR), 1K block activations via SOA interface, deferred block activation, new alarmable error messages from the NPAC/SMS, a new bulk data download format, OpGUI specifications and routable error reports. See *SOW No. 15*, at Key Terms and Guidelines, at page 3. In addition, pursuant to Statement of Work No. 25 in all United States regions, dated December 1, 2000, a dispute regarding charges for pooling transactions was settled, and the parties agreed that each pooling occurrence shall be subject to a charge equal to the product of number of TNs (that is, telephone numbers) comprising the block to be pooled times the price per TN Porting Event shown on Schedule 1 of Exhibit E to the Master Agreements, as

CONCLUSION

Telcordia Requests Extraordinary Intervention by the Commission Without Showing a Benefit to the Public Interest or Protection to Telecommunications Consumers.

In its Petition, Telcordia asserts that the recent arms length, good faith negotiation and adoption of Amendment No. 57³ in those seven separate United States regions is anti-competitive, unjust and unreasonable and requests the Commission to intervene now in the immediate administration of the Number Portability Administration Center/Service Management System (the “NPAC/SMS”) and the supervision of the third party administrator of the NPAC/SMS.⁴ Telcordia requests the Commission to exercise its extraordinary “plenary” authority both to actually eliminate certain provisions of Amendment No. 57 that were negotiated at arms length and in good faith and to order now the commencement of a competitive public bidding process for telephone number portability services, even before the expiration of the term of the Master Agreements as they existed before Amendment No. 57.

But Telcordia has failed in its Petition to demonstrate either the immediate public need or a genuine future threat to the public interest or to show a benefit to telecommunications

amended by SOW 25. Consequently, any change or alteration in NPAC/SMS services could not only adversely affect telephone number porting, but could also adversely affect telephone number pooling, although the administration of national telephone number pooling is the responsibility of the Pooling Administrator under separate agreements (which do not involve the NAPM LLC) and not the NPAC/SMS administrator.

3. Each of the Master Agreements under Article 13 expressly authorizes the Customer, here the NAPM LLC, to negotiate to amend and to amend the Master Agreement to add additional services and to make enhancements to the NPAC/SMS. Article 13 sets forth a specific set of procedures for such amendments, including the embodiment of suggested changes in Statements of Work. Over time, a convention has developed to refer to Statements of Work that do not reflect a charge to Users and End-Users as Amendments. As of the date of the Petition, 57 Statements of Work and Amendments have been negotiated and agreed upon, some of which also include separate subsequent releases and versions. Statements of Work are sometimes referred to as SOWs.

4. The NPAC/SMS is administered under seven separate Contractor Services Agreements for Number Portability Administration Center/ Service Management System Master Agreements between the NAPM LLC as the Customer and NeuStar, Inc. (“NeuStar”) as the Contractor (each such agreement referred to individually as a “Master Agreement” and collectively as the “Master Agreements”). All references in the Master Agreements and all Statements of Work and Amendments to the “Customer” or to the “Subscribing Customer” are to the NAPM LLC, the contracting entity thereunder, and not to individual Users or End-Users of the NPAC-SMS.

consumers that would warrant the Commission's extraordinary intervention now, especially in light of the more than 10 years of successful administration of the NPAC/SMS and supervision of the third party administrator by the NAPM LLC. That administration and supervision have been accomplished in accordance with a Commission-mandated process involving open-membership limited liability companies comprised of industry members and direct regulatory oversight by the Commission, through the North American Numbering Council (the "NANC").⁵

Adherence to that Commission-mandated process over 10 years has allowed the timely implementation of telephone number portability and pooling throughout the United States, as required by the Telecommunications Act of 1996, without the interruption or degradation of telecommunications service to consumers and, in fact, with the enhancement of services as technology evolves. The process is transparent and organic, and it incorporates the expertise and contributions of differing industry segments, subject matter experts, incumbent providers and emerging entrants and regional and federal regulators.

As a participant in that process, the NAPM LLC consistently has demonstrated its impartiality and has attempted in good faith to foster the public interest and to benefit telecommunications consumers in the administration of the NPAC/SMS and the supervision of the third party administrator. Amendment No. 57 is consistent with that history and practice.

5. The seven separate Master Agreements govern the administration of the NPAC/SMS in each of the seven United States former Regional Bell Operating Company ("RBOC") service areas or regions, and each was executed and has been in effect since late-1997 or early 1998. The earliest Master Agreement was entered into on September 22, 1997, and the latest three were entered into on February 13, 1998. These Master Agreements have been in effect without interruption since that time and have been supervised and administered by the NAPM LLC (or its predecessor regional limited liability companies) during all that time, in accordance with the initial directive and endorsement of the FCC contained in the *Second Report and Order*, CC Docket Number 95-116, RM 8535, FCC 97-289, adopted August 14, 1997 (the "*Second Report and Order*"), and subsequently further acknowledged without change by the FCC in the *Third Report and Order*, CC Docket Number 95-116, RM 8535, FCC 98-82, adopted May 5, 1998 (the "*Third Report and Order*").

**The NAPM LLC Has Always Encouraged and Continues to Encourage Competition,
and Amendment No. 57 Does Not Limit or Restrict the Freedom and Discretion
of the NAPM LLC to Foster That Competition.**

Contrary to Telcordia's assertions in its Petition that the NAPM LLC has thwarted competition and that Amendment No. 57 discourages it, the NAPM LLC has given, and even now after Amendment No. 57 remains open to give, serious consideration to all prospective vendors who offer either (or both) (a) improved functionality, service levels, reliability and efficiency or (b) material costs savings with at least the same functionality, service levels, reliability and efficiency, while recognizing and addressing issues and costs of transition and interoperability. In fact, far from discouraging competition, the NAPM LLC supports (and has supported) competition and has hosted presentations from prospective vendors Telcordia and VeriSign (in association with Evolving Systems on the VeriSign presentation). The NAPM LLC has never denied a prospective vendor's request to make a presentation. Adoption of Amendment No. 57 does not and will not change that.

The NAPM LLC also takes seriously its charge to foster the public interest and to protect consumers. Accordingly, the NAPM LLC has followed up on all vendor presentations, including Telcordia's, by insisting upon the substantiation of alleged cost savings, meaningful technical proposals and the confirmation of neutrality, especially in light of the availability to prospective vendors of all current contracts and technical specifications in the public domain, without the need for the issuance of an RFI or an RFP. The NAPM LLC cannot put in potential jeopardy the administration of telephone number portability services and the provisioning of pooling services in one or all United States regions by changing administrators, platforms, technologies or processes without careful consideration and deliberation and without basing its decision on

detailed, concrete and precise technical and financial proposals. Mere unsubstantiated claims are insufficient.

Accordingly, the NAPM LLC even activated a standing advisory committee called the Vendor Proposal Advisory Committee (the “VPAC”) to evaluate presentations and proposals, to follow-up on them and to make and present recommendations to the full NAPM LLC membership. Amendment No. 57 does not alter or in any way limit the operation or conduct of the NAPM LLC or the VPAC. In fact, the NAPM LLC and the VPAC have made clear to all prospective vendors the requisites for consideration of a proposal.⁶ Telcordia’s Petition seeks now to substitute the intervention of the Commission for this process.

6. For example, the VPAC has approved the form of a response letter to all inquiries that states, in part, the following:

“Thank you for your recent inquiry. Currently the NAPM LLC has no pending RFI or RFP, however, the NAPM LLC stands ready, as it always does (subject to binding contractual and regulatory limitations), to continue to explore meaningful unsolicited presentations that can be shown to deliver improved functionality, reliability and efficiency at materially reduced cost to the industry and the public and which adequately addresses the issues of transition or interoperability. As you may be aware, much information regarding the existing NPAC/SMS and the current contractual arrangement is available in the public domain.

Please also be aware, that in order to proceed with any investigation or consideration of any unsolicited proposal to provide NPAC/SMS services in any United States Service Area, the NAPM LLC must be assured that any prospective vendor must be a “Neutral Third Party.” Under the terms of our current Master Agreement, “a Neutral Third Party” is an entity which (a) is not a telecommunications carrier, as defined in the Communications Act of 1934 as amended; (b) is not owned by, or does not own, any telecommunications carrier; provided that ownership interests of five percent (5%) or less shall not be considered ownership for purposes of this Article; (c) is not affiliated, by common ownership or otherwise, with a telecommunications carrier; and (d) has no present intention of merging with or being acquired by an entity which is not a Neutral Third Party.”

See also follow up letters to both Telcordia and VeriSign (attached hereto as Exhibits 1A, 1B and 2A, 2B respectively).

**The Extraordinary Relief Requested by Telcordia
is Unnecessary Because A Commission-Mandated Process Already Exists
to Address Telcordia's Complaints, and Telcordia Has Failed to Exhaust That Process.**

Telcordia also has not exhausted the existing and long-standing regulatory process involving the NANC, established under the *Second Report and Order*.⁷ The relief requested by Telcordia in its Petition seeks to supplant this Commission-mandated process.

By letter dated February 7, 2007 (the "Telcordia NANC Letter"), Telcordia made the same assertions against Amendment No. 57 made in the Petition and has asked the NANC Chair for certain relief, including that NANC make a recommendation to the Commission.⁸ To date, the NANC has not yet made a recommendation to the Commission, but the NAPM LLC believes the matter is still pending before the NANC. Nonetheless, Telcordia has chosen to file the Petition and to appeal directly to the Commission, despite the Commission's explicit and express rejection of such a direct appeal right in the *Second Report and Order*.⁹

7. See *Second Report and Order* at paragraphs 128-130. In paragraph 130, the Commission stated the following:

"130. 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. ...[W]e 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 administrators, or any other matter involving the administration of local number portability."

8. In the Telcordia NANC Letter (attached hereto as Exhibit 3), Telcordia requested extraordinary action by the NANC to rescind Amendment No. 57 or to delete various provisions of Amendment No. 57. Telcordia requested the following action by the NANC:

"Telcordia requests that the topic be added to the NAPM LLC agenda [sic, Telcordia means the NANC agenda] and that the NANC either reconstitute the Legal Experts WG or constitute an IMG for a full and detailed review of the Terms and Conditions and to recommend that the FCC overrule the NAPC [sic] contract extension and the new terms and conditions or in the alternative, minimally overrule those terms and conditions which are beyond the scope of the NPAC and anti-competitive in nature."

9. The Commission stated the following in Paragraph 131 of the *Second Report and Order*:

"131. We [the Commission] reject USTA's request that we establish direct appeal provisions ... to contest decisions of the LLCs or the local number portability administrators regarding the administration

Although in the Petition Telcordia states that “Telcordia seeks no changes in the current system of Commission oversight of the number porting process,” the relief requested by Telcordia in that very Petition with respect to Amendment No. 57 is, in fact, an overt and specific change to the articulated current system of oversight. Telcordia requests the Commission to supplant the existing and long-standing regulatory process involving the NANC, established under the *Second Report and Order*, and to exercise its “plenary” authority,¹⁰ even though the NAPM LLC adhered to its processes and procedures, no partiality has been asserted, and Telcordia has not exhausted the process before the NANC to hear Telcordia’s complaint. By filing its Petition, Telcordia has chosen simultaneously to complain about Amendment No. 57 both before the NANC and before the Commission. Despite its protestations otherwise, Telcordia is requesting the Commission to intervene now to supplant and alter the long-standing Commission-mandated process under the *Second Report and Order*. Accordingly, the Petition is premature and improper.

Further, the Petition now before the Commission fails to provide adequate justification for the extraordinary relief requested. The Petition contains only unsubstantiated general predictions of costs savings and is devoid of any specific representations of Telcordia’s ability to deliver comparable or better service or any representations that the NAPM LLC has improperly deviated from its processes and procedures. The Petition also fails to show how the public

of number portability. As stated above, ...the LLCs and local number portability administrators have worked efficiently and fairly to implement local number portability, and none of the commenting parties identifies with precision any future circumstances in which the LLCs and local number portability administrators would fail to work efficiently and fairly. Moreover, by this order, the Commission establishes a procedure through which aggrieved parties may have their concerns addressed by the LLCs own dispute resolution process, by the NANC, and ultimately by the Commission. Given the ...availability of the NANC to recommend resolutions of matters brought before it to the Commission, we decline to establish special provisions for bringing such matters before ...federal regulators.”

10. See, e.g., Petition at page 22.

interest would be benefited or how telecommunications consumers would be protected by the relief requested.¹¹ For all these reasons, Telcordia's Petition should be rejected.

**The Commission's Forbearance from Direct Intervention Now
and Its Continuation of the Commission-Mandated Process
of NAPM LLC Management and Supervision
with Direct NANC Oversight Continues to be in the Public Interest
and to Protect Telecommunications Consumers.**

Both the public interest and the protection of telecommunications consumers will be promoted by continuing the long-standing process of allowing the NAPM LLC to administer the NPAC/SMS and to supervise the administrator under the direct and immediate oversight of the Commission through the NANC. If a dispute cannot be resolved after presentation to and deliberation by the NANC, the NANC can make a recommendation for resolution to the Commission. But it is not in the public interest to allow a disgruntled potential vendor to circumvent this process.

Amendment No. 57 is not anticompetitive, unfair or illegal, and it does not restrict the discretion and ability of the NAPM LLC to continue in good faith to evaluate alternate vendors, platforms and technologies. Amendment No. 57 is merely another example of the NAPM LLC's attempt in good faith to exercise its sound judgment and "valuable expertise."¹² There may be disagreement among well-meaning parties on that judgment, but the disagreement of a

11. As discussed in detail *infra*, Section 8.3 of Amendment No. 57 does not restrict or limit the contractual freedom of the NAPM LLC to consider other vendors, new solutions or improving technologies or to take advantage of changing market conditions to obtain material price reductions. In fact, Amendment No. 57 simply allows significant and non-refundable price reductions to be enjoyed currently and in the future until such time in the future as the NAPM LLC elects affirmatively to seek to pursue alternative vendors, new solutions or improving technologies or to take advantage of changing market conditions to obtain additional material price reductions, if in the future those potential benefits actually come to pass. Compared to the arrangement under the Master Agreements in effect immediately before Amendment No. 57, Amendment No. 57 is actually an enhancement of benefits to the NAPM LLC and the industry that it serves.

12. See, *Second Report and Order* at Paragraph 117.

disgruntled potential vendor alone does not rise to the public interest, especially when that vendor has not availed itself of existing adequate and continuing processes elsewhere.

DISCUSSION

I. What Amendment No. 57 Actually Says.

Telcordia objects to Section 8.3 of Amendment No. 57.¹³ Section 8.3 provides in its entirety as follows:

8.3 Upward Event Triggered Charge Adjustment

(a) *Application of Upward Event Triggered Charge Adjustment, Calculation of Increased Charge Amount and Application of Increased Charge Amount Cap*

Notwithstanding anything herein, including Attachment A under this Amendment, or in the Master Agreement, including any Statement of Work or amendment thereunder, to the contrary, upon the occurrence of any Customer Modification Event (as defined in Section 8.3(b) below) under any of the Master Agreements between Contractor and Customer on behalf of the Subscribing Customers set forth in Article 2 above, and after written notice to Customer, the charge per TN Porting Event under Rate Card 3 and the Effective Rate under Rate Card 4 then-used under Exhibit E in calculating the monthly Aggregate Porting Charge for the Service Area shall be adjusted (such adjustment the “**Upward Event Triggered Charge Adjustment**”) 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**”). The Upward Event Triggered Charge Adjustment shall be effective beginning in the month in which the Customer Modification Event occurred, for any Customer Modification Event occurring at any time after the Amendment Effective Date, and shall continue to apply each month thereafter to and including December 31, 2011. Notwithstanding the foregoing, if the Customer Modification Event resulting in an Upward Event Triggered Charge Adjustment occurs in calendar years 2009 through and including 2011, then the TN Porting Event charge or the Effective Rate resulting from such Upward Event Triggered Charge Adjustment shall be capped and shall not exceed Ninety Five Cents (\$0.95) (the “**Increased Charge Amount Cap**”). Notwithstanding anything herein to the contrary, if beginning January 1, 2009 and through December 31, 2011 the Annualized Volume calculated under Rate Card No. 4 under Attachment 1 to Exhibit E in any month, beginning with the month in which an Upward Event Triggered Charge Adjustment has been applied is less than Three Hundred Million (300,000,000) TN Porting Events, then the Increased Charge Amount shall be reduced from Nine Cents (\$0.09) to Four Cents (\$0.04), and the

13. The NAPM LLC believes that the following accurately summarizes the operation of Section 8.3: An “Upward Event Triggered Charge Adjustment” occurs in the amount of an “Increased Charge Amount” (not to exceed the “Increased Charge Amount Cap”) if a “Customer Modification Event” occurs on or before December 31, 2011, but a “Customer Modification Event” can only occur by “Official Customer Action.” A “Customer Modification Event” triggered by “Official Customer Action” can only occur by action of the NAPM LLC and not by the action of any User or End-User of the NPAC/SMS. “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 United States region) is further limited to only specified “Official Customer Action,” so that enormous flexibility is retained to seek competition and to consider various alternative solutions.

Increased Charge Amount Cap shall no longer have any force or effect, regardless of the number, occurrence or timing or any other Customer Modification Event that would otherwise result in an Upward Event Triggered Charge Adjustment. Notwithstanding anything herein to the contrary, if a Customer Modification Event occurs prior to January 1, 2007, then the Upward Event Triggered Charge Adjustment shall be applied beginning on January 1, 2007.

(b) *Customer Modification Events*

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, where “**Official Customer Action**” means either

(A) any of the following acts by Customer, or any of the Subscribing Customers set forth in Article 2 above, or their respective members in their duly authorized, official capacity as members of Customer or Subscribing Customer, or otherwise duly authorized to act on behalf of Customer or Subscribing Customer:

- (i) seeking, or otherwise attempting, to renegotiate a lower charge per TN Porting Event or Effective Rate than the then-current charges per TN Porting Event or an Effective Rate in Exhibit E, or the calculation method for deriving such charges per TN Porting Event or the Effective Rate that results in a lower rate for the then-current charges per TN Porting Event or the Effective Rate in Exhibit E, or the introduction of any terms or conditions under the Master Agreement that could reduce the charges per TN Porting Event or the Effective Rate in Exhibit E, or the calculation method for deriving charges per TN Porting Event or the Effective Rate in Exhibit E;
- (ii) issuing a request for information (RFI), a request for quotation (RFQ), a request for proposals (RFP) or other similar request for the provision of NPAC/SMS-type services in any United States Service Area;
- (iii) advocating, endorsing, adopting, or approving the development, implementation or use of an alternate TN-level routing administration capability; or
- (iv) accepting or approving a proposal or offer, whether solicited or unsolicited, to provide NPAC/SMS-type services in any United States Service Area.

or (B) any public statement or public announcement of the Customer, or any of the Subscribing Customers set forth in Article 2 above

- (i) expressing an intent to seek or otherwise to attempt renegotiation of, or to seek or otherwise renegotiate, a lower charge per TN Porting Event or Effective Rate than the then-current charges per TN Porting Event or the Effective Rate in Exhibit E or the calculation method for deriving such charges per TN Porting Event or the Effective Rate that results in a lower rate for the then-current charges per TN Porting Event or the Effective Rate in Exhibit E, or the introduction of any terms or conditions under the Master Agreement that could reduce the charges per TN Porting Event or the Effective Rate in Exhibit E, or the calculation method for deriving charges per TN Porting Event or the Effective Rate in Exhibit

E;

- (ii) expressing an intent to issue, or otherwise to issue, a request for information (RFI), a request for quotation (RFQ), a request for proposals (RFP) or other similar request for the provision of NPAC/SMS-type services in any United States Service Area;
- (iii) expressing an intent to advocate, endorse, adopt, or approve, or otherwise advocating, endorsing, adopting, or approving, the development, implementation or use of an alternate TN-level routing administration capability; or
- (iv) expressing an intent to accept or approve, or otherwise accepting or approving, a proposal or offer, whether solicited or unsolicited, to provide NPAC/SMS-type services in any United States Service Area.

Contractor and Customer agree and acknowledge that nothing in this Section 8.3 prohibits Customer from engaging in any Customer Modification Event, provided that upon the occurrence of any Customer Modification Event, the prevailing charge per TN Porting Event and the Effective Rate is subject to the Upward Event Triggered Charge Adjustment, as set forth in this Section 8.3.

For the avoidance of doubt, Paragraph (i) under Section 8.3(b)(A) and Paragraph (i) under Section 8.3(b)(B) above shall not apply with respect to any action concerning an adjustment to the TN Porting Event rate or Effective Rate under the Gateway Evaluation Process of Article 32 of the Master Agreement, including requests to negotiate or to waive the application of thereof.

For the avoidance of doubt, Section 8.3(b)(A)(iii) and Section 8.3(b)(B)(iii) above shall not be interpreted to include as a Customer Modification Event the participation of a member of Customer or Subscribing Customer, other than in their duly authorized, official capacity as members or otherwise duly authorized to act on behalf of Customer or Subscribing Customer, in industry forums, such as the ENUM LLC, or trials for an alternate TN-level routing administration capability, such as ENUM.

For the avoidance of doubt, the application or non-application of an Upward Event Triggered Charge Adjustment under this Section 8.3, shall not in any way affect the rescissions set forth in Section 8.2.

(c) Exceptions to Customer Modification Events

An event otherwise qualifying as a Customer Modification Event shall not be considered a Customer Modification Event for purposes of this Section 8.3 under any of the following circumstances (such event under that circumstance an “**Excluded Customer Modification Event**”):

- (i) beginning on January 1, 2008 (i.e., when Rate Card No. 4 applies under Exhibit E of the Master Agreement), if the Customer Modification Event occurred after the actual cumulative TN Porting Event volume for all United States Service Areas in which Contractor provides Services exceeds Seven Hundred Million (700,000,000) TN Porting Events in the immediately preceding twelve (12) calendar month period (i.e., trailing twelve calendar months); or
- (ii) if a federal rule, regulation or order, (collectively, a “**Regulatory Act**”) of any regulatory body and its components (a “**Regulatory Entity**”) having jurisdiction or

delegated authority over Contractor, Customer, its member and the Users, and the NPAC/SMS specifically and expressly requires the Customer to perform any Customer Modification Event, and Customer does perform such Customer Modification Event; provided, however, that the Regulatory Entity issuing the Regulatory Act has the legal authority to issue the Regulatory Act, and does so in accordance with all applicable requirements to the Regulatory Entity, and provided further that Customer, or Subscribing Customer, including its co-chairs and members in their duly authorized, official capacity as members or otherwise duly authorized to act on behalf of Customer or Subscribing Customer, did not advocate, endorse, lobby, orchestrate, whether directly or indirectly, the Regulatory Entity with respect to the Regulatory Act that is a specific and express requirement for Customer to perform a Customer Modification Event.

Notwithstanding anything herein to the contrary, if the date of an Official Customer Action identified under Section 8.3(b) above occurs prior to the date of the occurrence of a related Excluded Customer Modification Event, then the Upward Event Triggered Charge Adjustment shall nevertheless apply.

For the avoidance of doubt, the measurement of a cumulative TN Porting Event volume set forth in Paragraph (i) of Section 8.3(c) above concerns actual TN Porting Events, and shall not be interpreted in any way to mean the “Annualized Volume” calculation under Attachment 1 to Exhibit E.

II. Telcordia’s Petition is Without Any Merit.

Telcordia’s characterization of Amendment No. 57 as a “devil’s bargain”¹⁴ and mischaracterization of its provisions as “penalty provisions”¹⁵ that are “anti-competitive,”¹⁶ a “sham”¹⁷ and “illegal”¹⁸ are neither in the public interest nor do they promote the protection of consumers, and they are without merit and are untrue. Meaningful public debate and thoughtful industry and regulatory consideration of this matter are not advanced by Telcordia’s mischaracterizations of Amendment No. 57, on the one hand, and Telcordia’s completely unfounded, unsubstantiated and speculative claims of cost savings through some kind of interim open bidding process, on the other hand.

14. Petition at page 22.

15. Petition at pages i, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 18, 22.

16. Petition *e.g.*, at page 3.

17. Petition at page 10.

18. *See* Petition at page 11.

Telcordia's Petition does not (because Telcordia cannot) assert that the current NPAC/SMS services are inadequate, unreliable or obsolete, nor does Telcordia assert that it or any other vendor can, in fact, now deliver superior services (or even comparable services) or ensure that no interruption in telecommunications services to consumers would result if all or any of the United States regions transitioned to new, untested administrators as part of an open bidding process now. Therefore, Telcordia makes no allegations that the current NPAC/SMS is inadequate, obsolete or insufficient or that Telcordia or any other vendor proposes improvements, new ideas or advanced technology.

In fact, Telcordia has made no detailed proposal with technical or financial specificity. This despite the fact that Telcordia was invited over 2 years ago, in March 2005, to present a proposal for NPAC/SMS services, without preconditions. Telcordia had, and continues to have, full access to all documents and agreements in the public domain that are necessary to prepare such a detailed proposal, including existing current and revised versions of the Functional Requirements Specifications (the "FRS"), Interoperable Interface Specifications (the "IIS"), Guideline for the Definition of Managed Objects (the "GDMO") and Abstract Syntax Notation (the "ASN.1") and including all the existing contracts and agreements with the current administrator in all regions. It is hard to imagine what an RFI or even an RFP could add to this wealth of specific publicly available information.

To date, Telcordia has presented no meaningful written proposal, but has merely made a conceptual sales presentation. Although the NAPM LLC recognized and acknowledged the "conceptual nature" of the Telcordia presentation in a follow-up letter to Telcordia, the NAPM LLC also clearly expressed and articulated its willingness to proceed with and to consider any presentation by Telcordia to the NAPM LLC Members to provide NPAC/SMS services in any

United States region.¹⁹ In that follow-up letter, the NAPM LLC requested specific confirmation of Telcordia's qualification as a "Neutral Third Party"²⁰ as required by the Master Agreements and the Commission Orders.²¹ In another follow up correspondence, the NAPM LLC succinctly and clearly stated that it "stood ready" to explore any presentation "that can be shown to deliver improved functionality, reliability and efficiency at materially reduced cost to the industry and the public and which adequately address[es] issues of transition and interoperability."²² Telcordia has not yet provided either adequate evidence of its qualification as a Neutral Third Party or any follow-up proposal to provide NPAC services, beyond its conceptual sales presentation.

Telcordia devotes over a page of its Petition to justify why Telcordia has failed to present any detailed technical and financial proposal to the NAPM LLC. *See* Petition at pages 17-18. Telcordia admits a five month response time to the December 2005 letter from the NAPM LLC requesting substantiation of Telcordia's alleged neutrality after its acquisition by one or more Warburg Pincus investment funds or affiliates.

19. *See* letter dated August 17, 2005, where the NAPM LLC advised Telcordia that its presentation was "conceptual only, provided no substantiated cost or pricing information and did not address ... issues associated with the current vendor and ...[transitioning]...technology," but indicated the willingness to proceed to consider Telcordia presentation and requested information regarding the qualification of Telcordia as a "Neutral Third Party" as required by the Master Agreements. Attached hereto as Exhibit 4.

20. Section 1.30 of the Master Agreements defines a "Neutral Third Party" as follows:

"1.30 The term "Neutral Third Party" means an entity which (i) is not a telecommunications carrier, as defined in the Communications Act of 1934 as amended; (ii) is not owned by, or does not own, any telecommunications carrier; provided that ownership interests of five percent (5%) or less shall not be considered ownership for purposes of this Article; or (iii) is not affiliated, by common ownership or otherwise, with a telecommunications carrier."

21. *See, e.g. Second Report and Order* at paragraph 33, where the Commission repeated its direction to NANC that the administrators must be "independent, non-governmental entities that are not aligned with any particular telecommunications industry segment." *See also Second Report and Order* at Paragraph 7

22. *See* letter dated December 2, 2005, attached hereto as Exhibit 5.

Telcordia asserts that it was reluctant to share proprietary or confidential information at open meetings of the NAPM LLC and that it was never given “an opportunity” to present confidential information or that it was “never asked to submit the additional proprietary information with regard to its proposal...” Petition at 17. This is simply untrue.

By letter dated December 2, 2005, the NAPM LLC made clear its view that because of the information now in the public domain, even without the issuance of an RFP or an RFI, the NAPM LLC could not give serious consideration to any “presentation that failed now specifically to identify and to substantiate asserted benefits.”²³ It is hard to imagine a clearer expression of the need for a detailed and substantiated proposal, even if it included proprietary information.

It should be noted that information submitted in response to an RFI or an RFP is not automatically accorded confidential protection.²⁴ The NAPM LLC also should not be faulted for not chasing a prospective vendor and managing that vendor’s presentation process – such conduct would smack of preferential treatment and should not be the job or duty of a prospective customer.

The NAPM LLC never informed Telcordia or any other prospective vendor that the NAPM LLC would not maintain presentation or proposal detail confidential or that a

23. *See id.*

24. *See* Request for Proposals for the Number Portability Administration Center/ Service Management System (NPAC/SMS) in the US West Region, dated September 16, 1996, (attached hereto as Exhibit 6) at Section 1.3.4 that stated the following:

“1.3.4 Confidentiality. Do not submit any proprietary or confidential information or mark it as such. In no event will the contracting entity consider or hold any information contained in your proposal proprietary or confidential, except for pricing information. The contracting entity reserves the right to release an average and range of prices received.”

In addition, the NAPM LLC now considers rate cards under the Master Agreements to be public information, for a number of reasons, including the public filings of NeuStar and the delivery of rate cards to End-Users who are not parties to the Master Agreements.

presentation by a prospective vendor could never be in the closed, non-public portions of the NAPM LLC meetings. Telcordia never asked the NAPM LLC to make a confidential follow-up presentation, nor did Telcordia request that it be granted permission to submit a confidential detailed proposal. For Telcordia to assert or to imply otherwise is simply untrue.

Further, if Telcordia inferred that the NAPM LLC would never entertain a request by Telcordia for some level of confidentiality with respect to a detailed proposal, that is Telcordia's misjudgment, and the NAPM LLC should not be forced to initiate an RFI or RFP process based on that misjudgment. The simple truth is that Telcordia never requested a special confidential session in which to present a detailed and substantiated proposal for NPAC/SMS services to the membership of the NAPM LLC, despite repeated statements that the NAPM LLC stood ready to give serious consideration to such a detailed and substantiated proposal.

Accordingly, it would be both against the public interest and likely adversely affect consumers if Telcordia were allowed to force the NAPM LLC to commence a time-consuming public bidding process when Telcordia has been afforded the opportunity to demonstrate the details and merits of their alleged proposal but has opted to avoid the heavy lifting necessary to do so.

III. The NAPM LLC is Expressly Authorized to Manage and to Supervise the NPAC/SMS Administrator, Including Modifications to the NPAC/SMS Over Time and including Negotiation and Modification of the Contractual Arrangement with the Administrator.

Although the NAPM LLC recognizes the authority and vital role of the NANC with respect to local number portability and the administration of the NPAC/SMS and its contractors²⁵, and the ultimate authority of the Commission, the *Second Report and Order*²⁶ also

25. *See, for example, Second Report and Order, FCC 97-289, Paragraphs 128-131.*

expressly designates limited liability companies (“LLCs”) in each of the seven United States regions to oversee and to manage the NPAC/SMS contractors (referred to as administrators) and to serve as the contracting entity in each of these Service Areas with the respective administrators. By the *Second Report and Order*, the FCC mandated the use of these LLCs instead of direct governmental contracting and administration.

In the *Second Report and Order*, the FCC explained the rationale for utilizing these LLCs as follows, especially in light of the likelihood that the NPAC/SMS will need to evolve and to be modified over time:

“116. We agree with the NANC that there will likely be a need to modify some requirements to permit database system enhancements and other modifications as local number portability is deployed throughout each region. Without a single entity to oversee such modifications in each region, local number portability administrators would likely be faced with varied, if not conflicting, proposals from the carriers utilizing the database regarding how the modifications should be implemented. The need for the local number portability administrator to reconcile such varied proposals, in turn, could potentially delay the administrator from making necessary modifications.

117. We conclude that the LLCs are the entities that are best able to provide immediate oversight of the local number portability administrators at this time. Because the LLCs are responsible for negotiating the master contracts with their respective local number portability administrators, each LLC is the entity with the greatest expertise regarding the structure and operation of the database for its region. Therefore, with respect to each region, using an entity other than the LLC to provide immediate oversight of the local number portability administrator would waste the LLC’s valuable expertise and run the risk that necessary modifications to the database system may be delayed.”

The NAPM LLC believes that those statements are as true today as they were when promulgated by the Commission.²⁷ Since the seven separate Master Agreements were executed

26. See, for example, *Second Report and Order*, FCC 97-289, Paragraphs 115-117.

27. The three reasons cited by the Commission to support this conclusion are as true today as when stated by the Commission. The Commission stated the following:

“First, the current record does not support a finding that the LLCs will act in a fashion that is not fair...Second, ...there are significant protections to ensure fair and impartial actions by the LLCs...[M]embership in the LLCs is open to any ...carrier that intends to port numbers, LLC meetings are

beginning in 1997, the seven LLCs (and now their successor, the NAPM LLC²⁸) have managed and supervised the NPAC/SMS contractor, have considered and approved modifications and enhancements to the NPAC/SMS to respond to industry, technological and financial changes and evolution, and have updated, modified and extended the Master Agreements to reflect those modifications and enhancements. Such modifications have included (1) modifications to the NPAC/SMS to implement the Commission's order for wireless number portability, commencing with Statement of Work 10 and revisions thereto, (2) approval of an assignment of the Master Agreements in November 1999 to NeuStar, Inc., after formation of NeuStar to succeed to the interest of Lockheed Martin IMS after Lockheed Martin IMS no longer qualified as a Neutral Third Party by reason of the acquisition of a telecommunications service provider by Lockheed Martin, (3) a substantial modification and improvement of Service Level Requirements ("SLRs") monitoring, price reductions and extension of the initial term by reason of Statement of Work 25, (4) clarification of utilization of the database to implement FCC-mandated pooling requirements and the settlement of disputes regarding the pricing for such utilization and (5) several contractual improvements and associated pricing reductions, including Statement of Work 43 and other Statements of Work to fine-tune the contractual, service level monitoring and pricing structure of the Master Agreements to accommodate developments in the telecommunications industry since 1997.

generally open to the public, and members of the LLCs have agreed to require supermajority or unanimity with respect to voting on certain important decisions, such as the execution of the master contract...Third, we reject arguments ...that permitting the LLCs to oversee the number portability database administrators would be inconsistent with the *First Report and Order* because the LLCs are not...neutral." Paragraphs 120-122.

28. On November 1, 1999, the NAPM LLC was formed upon the merger or consolidation of the seven separate regional LLCs, and after such combination, the NAPM LLC has operated as the sole limited liability company, by operation of law, in the seven separate United States regions as the successor-in-interest to each of the seven original regional LLCs. Nonetheless, despite the consolidation of the seven LLCs into the NAPM LLC, the seven separate Master Agreements have been maintained and preserved as distinct and separate contractual relationships.

These modifications were evaluated and accomplished without pre-approval by either the NANC or the Commission (but by consulting with them and advising them of such modifications). They were also evaluated and accomplished in accordance with the *Second Report and Order*, utilizing the input and recommendations of subject matter expert groups, such as the Local Number Portability Administration Working Group (the “LNPA WG”) (in which all vendors, including Telcordia, are active participants), on technological issues, and following the procedures and requirements of the NAPM LLC itself. That same process was adhered to with respect to Amendment No. 57. Nothing in this industry is static (nor should it be), and the *Second Report and Order* recognized this and the need to empower the LLCs to modify and to enhance the NPAC/SMS, and, accordingly, to modify and to amend the respective contractual relationships and agreements with the NPAC/SMS administrator. Accordingly, there is no basis to rescind or to reconsider Amendment No. 57.

IV. Telcordia Does Not Assert that the NAPM LLC Deviated From Its Long-Standing Procedures and Processes.

Telcordia’s arguments and predictions of the future mask a complete absence of any evidence or even allegation that the NAPM LLC by its negotiation, approval and adoption of Amendment No. 57 has acted improperly or has deviated from its processes and procedures. In fact, the NAPM LLC has strictly and carefully adhered to its long-standing and well-understood mandate as articulated by the Commission in the *Second Report and Order* to utilize its “valuable expertise” to provide “immediate oversight” of the NPAC/SMS and the administrator in each of the seven United States regions, to avoid delays in “necessary modifications in the database system,” and to follow a decision making process, as reflected in its written operating agreement and as implemented in at least regular monthly meetings, that is “fair and impartial.” See e.g., *Second Report and Order* Paragraphs 115-121.

There is nothing now broken or skewed in the LLC deliberation and decision-making process with respect to Amendment No. 57 to warrant, as Telcordia requests in its Petition, the Commission's extraordinary exercise of its "plenary" authority. Telcordia does not contend that the NAPM LLC failed to follow its processes or otherwise stifled the participation of any Members or participants. Telcordia merely disagrees with the decision of the NAPM LLC after its proper and appropriate consideration and deliberation.

V. **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 regions. 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 allowed Telcordia to make an unsolicited presentation before at least one meeting of the entire membership, has invited additional details and specifics as a followup to the generalized presentation, and has established the VPAC, a standing Advisory Committee of the NAPM LLC, to investigate and to advise the entire membership of the NAPM LLC with respect to all presentations and inquiries from potential vendors.²⁹

The NAPM LLC believes that all material information required for a potential vendor to assemble and to present a meaningful proposal 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.

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

The FRS, IIS, GDMO and ASN.1³⁰ are all in the public domain; the NAPM LLC operating agreement is in the public domain; and even the Master Agreements and all current amendments and statements of work are in the public domain. Further, because the current administrator is a public company, pricing and margin information is also available in the public domain.

Nonetheless, despite the wealth of this public domain information, Telcordia has chosen not to present a detailed proposal that would warrant serious consideration of 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.³¹ 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 Commission rulings and the Master Agreements.³²

It is difficult not to view Telcordia's Petition 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 under its operating agreement and Commission 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

30. See *supra* page 13 for definitions of this published information.

31. See *supra* footnote 6 regarding the contents of that letter.

32. Attached hereto as Exhibit 8 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.

both the Master Agreements and the applicable Commission (and NANC) procedures and requirements.

VI. Telcordia's Request that the Commission Exercise Its Plenary Power is Extraordinary, Premature and Unjustified.

Telcordia requests extraordinary action by the Commission to rescind Amendment No. 57, to delete various provisions of Amendment No. 57, and to direct the NAPM LLC to commence an open bidding process, in effect to issue an RFP, based merely upon Telcordia's baseless accusations of favoritism. There is no basis for such extraordinary action by the Commission. Granting Telcordia's request would be contrary to both the mandate of the Commission and the longstanding practices of the NAPM LLC, NANC and the Commission itself.

Telcordia requests the Commission to use its "plenary"³³ authority to reverse the Commission's past long-standing decision³⁴ to empower what is now the NAPM LLC to oversee and to manage the administrator and its contracts in each of the seven United States regions to implement local number portability. Telcordia's request is inappropriate and unnecessary, because the NAPM LLC is already subject to specific oversight by and reporting to NANC, coupled with a specific sequential dispute resolution process involving NANC and recommendations by NANC to the Commission, as initially established in the *Second Report and Order*. This process has consistently been followed since the issuance of the *Second Report and Order* in August 1997 and the administration of the NPAC/SMS has never been challenged by a direct appeal to the Commission by Petition.

33. See e.g. Petition at page 2 (the first of repeated requests for the Commission to exercise its "plenary authority.")

34. See *Second Report and Order* at paragraph 117.

Telcordia has not adequately availed itself of the existing process nor seen it to completion; just as Telcordia has opted to avoid the heavy lifting necessary to demonstrate the details and merits of its alleged proposal for NPAC/SMS services. Instead, Telcordia seeks to accomplish an end run around those procedures and processes and to avoid them, all to the potential detriment of the public interest and telecommunications consumers.

VII. The Specific Reasons Offered by Telcordia to Rescind Amendment No. 57, Eliminate Certain of its Terms and Direct the NAPM LLC to Commence a Competitive Bidding Process are Baseless.

Reduced to its essence, Telcordia simply asserts that Section 8.3 of Amendment No. 57 is anti-competitive because (1) it preserves the current administrator, NeuStar, as the sole and single administrator in all seven United States regions, allegedly contrary to the Commission's determination that a single administrator was unacceptable, and (2) it is in essence an impermissible "penalty"³⁵ provision that locks in NeuStar and locks out other prospective vendors. Telcordia is wrong on both counts.

The Commission never mandated more than one administrator, and the continuation of NeuStar as the current administrator pursuant to Amendment No. 57 during the current term is not per se suspect. Amendment No. 57 retains all the protections of the Master Agreements before Amendment No. 57 to foster competition and to remain with or to migrate away from NeuStar in one or more of the United States regions, as the future may dictate.

Further, Section 8.3 of Amendment No. 57 merely provides that substantial transaction price reductions obtained by Amendment No. 57 will be discontinued and the transaction prices will on a going forward future basis only revert to pre-Amendment No. 57 pricing in the event of a so-called Customer Modification Event. Both competition and the ability to adopt new

35 *See supra* footnote 13.

solutions are preserved to the exact same extent as they existed before Amendment No. 57, without change.

A. The Commission Never Mandated More Than One Administrator and Long Ago Recognized the Need to Consider the Goals of Implementing Local Number Portability and Effecting the Purposes of the Telecommunications Act of 1996 Versus Insisting Upon More than One Administrator.

Telcordia attempts to imply that the administration of the NPAC/SMS in the seven United States regions by one administrator is per se suspect and warrants intervention by the Commission now, following the adoption of Amendment No. 57. But even Telcordia's Petition acknowledges that the Commission only ever ruled that "one or more"³⁶ database administrators should be selected, and that the NANC, the LNPA WG (a subject matter group under the NANC) and the Commission never made specific recommendations that "more than one" database administrator must be selected or that "one" database administrator was insufficient or per se improper.

In fact, in the *Third Report and Order*, when it became apparent that Perot Systems, which had been selected as the administrator in three of the seven United States regions, could not deliver the required NPAC/SMS services, the Commission acknowledged that the Master Agreements with Perot Systems had been terminated by the LLCs in those three United States regions and that those LLCs entered into Master Contracts with the same administrator that was then acting in the other four regions. Therefore, even before the NPAC/SMS became operational, the Commission was aware that one administrator was acting in all seven United States regions, but pursuant to seven separate Master Agreements, the terms of which the Commission had previously "approved." See *Third Report and Order*, at Paragraph 13.

36. Emphasis added.

Accordingly, for Telcordia to imply now that the continuation of a single administrator in the seven regions is somehow per se improper or suspect is simply disingenuous and misleading. Now, as then, the proper analysis is whether the interests of the public and the protection of telecommunications consumers are better advanced by either (1) the continuation with one administrator pursuant to clear and auditable Master Agreements that are continuously monitored and evaluated by the NAPM LLC in the context of changing circumstances and performance milestones and that have allowed the successful deployment and implementation of local number portability or (2) the mandated interruption of that arrangement prior to 2011 based solely upon blind adherence to a theoretical principal of “multiple contractors” and unsubstantiated assertions of potential costs savings by an interested prospective contractor. The public interest and the protection of consumers demand more than the second choice.

B. Telcordia Mischaracterizes Amendment No. 57 as Containing “Penalty” Provisions, Which It Does Not; the Provisions of Amendment No. 57 Actually Are in the Public Interest and Promote the Continued Protection of Telecommunications Consumers.

Telcordia asserts that Amendment No. 57 is anti-competitive, and, therefore, is detrimental to number portability. This is based on Telcordia’s labeling of Section 8.3 of Amendment No. 57 as a “penalty” provision. Section 8.3 includes no penalties, and, Telcordia’s assertions reflect a misreading and misunderstanding of both the Master Agreements and Amendment No. 57. Amendment No. 57 does not restrict potential competition in any of the seven United States regions, nor does it impede or restrict flexibility of the NAPM LLC to consider and to adopt evolving or improved technologies or solutions. Further, Amendment No. 57 was not unfairly or clandestinely adopted.

C. **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.**

It is not in the public interest to allow a prospective vendor, such as Telcordia, to force the NAPM LLC by mere baseless and unsubstantiated allegations of partiality to commence an open bidding process or some kind of an RFP to avoid the implementation of Amendment No. 57 which was properly negotiated, approved and adopted. Amendment No. 57 in no way restricts or limits the freedom and discretion of and the exercise of sound judgment by the NAPM LLC.

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 future basis only revert to pre-Amendment No. 57 pricing 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.

Amendment No. 57 does not result in the assessment of any additional charges to the industry from amounts charged under the Master Agreements prior to Amendment No. 57. Instead, Amendment No. 57 delivers material and substantial cost savings for services compared to the charges under the Master Agreements prior to Amendment No. 57. After the adoption of Amendment No. 57 (just as before the adoption of Amendment No. 57), the NAPM LLC, in accordance with its longstanding processes and procedures under its operating agreement (which is unchanged as a result of Amendment No. 57) and in accordance with Commission Rules and Orders, remains free to consider and to adopt other prospective vendors, alternative platforms

and evolving technologies, at the time or times that the NAPM LLC determines to be most beneficial, either in one or more United States regions, either simultaneously or sequentially.

Far from having the “practical effect”³⁷ of inducing a disadvantageous exclusive relationship with the current administrator, as Telcordia asserts in its Petition, Amendment No. 57 actually allows the industry to enjoy and to reap material porting and pooling costs savings from the current administrator, estimated by the NAPM LLC to approach \$200,000,000 through December 2011 based upon conservatively projected porting and pooling volumes. Although these cost savings would not be enjoyed or realized prior to Amendment No. 57, even after Amendment No. 57 the NAPM LLC continues to be free to consider and to evaluate evolving technologies, economies, porting volumes and service provider behavior in what can only be described as a dynamic and uncertain telecommunications environment.

Therefore, under Amendment No. 57, when the NAPM LLC ever decides, in the proper exercise of its judgment, to invite proposals from prospective vendors or to explore, adopt or endorse alternative platforms or technologies, in one or more United States regions prior to 2011, the industry is not required to refund a penny of the material porting costs savings it has garnered and banked under Amendment No. 57. Those savings or cost reductions are simply PROSPECTIVELY DISCONTINUED for future porting, and the porting charges for future porting are reinstated to what they would have been in the absence of Amendment No. 57. Even better, those higher porting charges for future ports are only reinstated on a stepped scale, but in NO EVENT will the rates shown on the rate card be more than what they were under the Master Agreements before Amendment No. 57.

Further, under Amendment No. 57, when the NAPM LLC ever decides, in the proper exercise of its judgment, to invite proposals from prospective vendors or to explore, adopt or

endorse alternative platforms or technologies, in one or more United States regions after 2011, then those savings are not even prospectively discontinued; instead, they are locked in and continue if the NAPM LLC elects to keep the Master Agreements in force until 2014.

When Telcordia's mischaracterizations are revealed and shed, it is clear that Amendment No. 57 is an objectively beneficial arrangement for the NAPM LLC and the industry. Material porting and pooling cost savings are banked by the industry under Amendment No. 57, while the NAPM LLC can continue to monitor (without any additional contractual limitations or conditions), administrator performance, porting volumes, alternative platforms and technologies, service provider behavior and use of the NPAC and developments in the telecommunications industry, including convergence across media, VoIP, soft switch migration, the introduction and acceptance of new technologies and next generation services and regulatory and statutory developments and changes. Then, under Amendment No. 57, at the time that the NAPM LLC ever exercises its right to invite proposals, migrate to alternative contractors or platforms or even to seek additional cost reductions from the current administrator, the automatic porting cost savings simply cease going forward, and the porting charges on the rate cards revert to amounts no greater than they would have been if Amendment No. 57 was never adopted. Of course at that time, there is no telling that even that reversion would be halted by negotiation and agreement.

Amendment No. 57 is a no-lose proposition for the NAPM LLC and the industry, no matter what some of its provisions are labeled. It provides no contractual disincentive to competition or to consideration and adoption of better or more innovative technologies by the NAPM LLC, in one United States region, in multiple regions, or in all regions. Section 8.3 in no way condemns the NPAC/SMS in any region to legacy technology. In addition, although

37. See e.g. Petition at page 11.

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 or the Subscribing Customer³⁸ 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 to the industry current and future porting and pooling price reductions greater than the existing Master Agreements in effect before Amendment No. 57. 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 expressly was 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.

38. See *supra* footnote 13. “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 Section 8.3. Furthermore, the action of the Customer and Subscribing Customer, (that is, the NAPM LLC in each United States region) is further limited to only specified “Official Customer Action,” so that enormous flexibility is retained to seek competition and to consider various alternative solutions now and in the future.

D. Amendment No. 57 Delivers Material Cost Savings to the Telecommunications Industry, While Preserving Both of the Two Core Protections in the Master Agreements that Ensure Potential Competition.

The amendments to the Master Agreements reflected in Amendment No. 57 were approved by the NAPM LLC because they provided immediate and future substantial price reductions for porting and pooling transactions, while preserving both rigorous service level requirements and contractual flexibility to accommodate current and future market, technological and financial evolution. Amendment No. 57 is not, as Telcordia alleges, anti-competitive, nor does it doom the NPAC/SMS to legacy technology or stunt its evolution by locking in an exclusive contractual relationship with the current administrator. Instead, Amendment No. 57 delivers immediate and material current and future cost savings to end users, without sacrificing or diminishing the two principal provisions in the Master Agreements that foster competition and ensure contractual flexibility to accommodate current and future market, technological and financial changes. First Amendment No. 57 preserves the legal and operational separateness of the seven separate Master Agreements for the seven United States regions, so that potential competition is preserved across geographic regions. Second, Amendment No. 57 preserves the nonexclusivity of the contractual relationship with the current administrator, without any required transaction minimums, so that experimentation and the ability potentially to migrate to other vendors or technologies, if desired, are preserved.

Despite attempts over the years to consolidate the seven separate Master Agreements or to combine the seven separate NPAC/SMSs into a “centralized” solution³⁹, 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

39. See Master Agreements at Article 29

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 Commission mandate⁴⁰ and the ability to entertain competitive but interoperable solutions in the various United States regions.

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 region by region or in any combination.

The NAPM LLC paid careful attention to ensure, as it always does, non-discriminatory access to the NPAC/SMS services and the continued neutrality of the NPAC/SMS administrator, as required by both the Master Agreements and the applicable Commission (and NANC) procedures and requirements, and also carefully and diligently followed all of its processes under its operating agreement and Commission rulings. 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 current flexibility of the Master Agreements.

40. *See Second Report and Order* at paragraphs 21-24.

REQUEST FOR RELIEF

For all the reasons set forth herein, Telcordia's Petition is without merit and there is no reason that the relief requested by Telcordia should be granted. The NAPM LLC respectfully requests that the Commission deny the Petition in its entirety.

Respectfully Submitted



Dan A. Sciallo
Berenbaum, Weinshienk & Eason, P.C.
370 Seventeenth Street
Suite 4800
Denver, Colorado 80202
303-825-0800

*Counsel for the North American Portability
Management LLC*