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

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| In the Matter of<br><br>The Petition of Telcordia Technologies, Inc. To Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration | )<br>)<br>)<br>)<br>)<br>)<br>) | WC Docket No. 07-149 |

# OPPOSITION OF NEUSTAR, INC.


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## SUMMARY

The Commission should reject out of hand the Petition by Telcordia Technologies Inc. ("Telcordia") to abrogate midterm the lawful, commercially negotiated contracts under which NeuStar, Inc. ("NeuStar") provides high-quality local number portability ("LNP") administration services for the telecommunications industry. NeuStar has served the public interest by providing exemplary performance as LNP administrator ("LNPA") and advancing number portability goals. In its role as LNPA, NeuStar has ensured the seamless functioning of the Number Portability Administration Center ("NPAC") database, rapidly integrated new technologies into the portability process, and expeditiously resolved number portability issues.

Significantly, Telcordia's objections do not challenge or criticize NeuStar's administration of the NPAC. Nor does Telcordia assert that NeuStar has provided number portability services in a non-neutral manner. Instead, Telcordia's Petition is nothing more than a self-serving attempt to advance its own commercial interests. Before NeuStar and the industry consortium managing LNP administration, the North American Portability Management, LLC ("NAPM"), negotiated the most recent amendment to their existing contracts, Telcordia and other vendors made presentations that the NAPM considered. Having failed in the marketplace, Telcordia now seeks a second "bite at the apple" through an unnecessary regulatory intervention.

Telcordia's Petition strains credulity by asserting that, when NeuStar agreed to modify the existing contracts and reduce prices significantly, it foisted anticompetitive and over-priced contracts upon the NAPM, composed of many of the world's largest and most sophisticated carriers. Contrary to Telcordia's assertion, Amendment 57 to the LNP administration "Master Agreements" benefits all parties involved in number porting. The Amendment delivers immediate and future cost savings to telecommunications providers and their customers. In fact,

through this and prior amendments, NeuStar has agreed to reduce porting transaction charges nearly 60 percent over the course of its tenure as LNPA, saving the industry and consumers hundreds of millions of dollars. As with prior amendments, the most recent price reductions were the result of a commercial arm's-length negotiation. In exchange for NeuStar agreeing to reduce prices in the middle of the contract term, it received an extended contract term -- a commonplace occurrence in commercial transactions. Nevertheless, Amendment 57 preserves the non-exclusivity concept enshrined in the Master Agreements, thereby retaining the NAPM's competitive options to consider additional vendors.

Telcordia wholly fails to demonstrate any legal or policy basis for Commission intervention to abrogate the LNP administration contracts. The Commission's implementing orders requiring "one or more" LNP administrator(s) conclusively rebut Telcordia's theory that a single LNPA violates Commission policy. Telcordia further can neither support its contentions that Amendment 57 violates the antitrust laws or any other statutory provision nor meet the stringent standard set for Commission intervention to modify or abrogate commercial contracts.

Further, abrogating Amendment 57 to the Master Agreements midterm and requiring a new competitive bidding process, as requested by Telcordia, would be needlessly disruptive to local number portability operations and would achieve no significant public interest goal. Moreover, there would be no guarantee that another vendor could: (1) qualify as a "neutral third party;" (2) deliver any savings over the existing pricing structure; and (3) deliver a highly technical and complex system that would seamlessly enable the routing of the millions of calls handled by the current architecture. Through the process carefully established by the Commission, the industry has successfully negotiated with vendors for the term, price, reliability and service levels for these ongoing clearinghouse services for over a decade. The contracts

have resulted in the establishment of a critical, centralized network component that has been modified on numerous occasions to deliver ever-increasing functionality and efficiency while improving service quality. There has been no market or policy failure with respect to LNP administration that requires Commission intervention to remedy.

The Commission accordingly should reject summarily Telcordia's attempt to 1) undercut NAPM's vital delegated role in overseeing and managing LNP database administration, 2) interfere with the commercially negotiated Master Agreements that benefit all carriers and consumers and are important to disaster recovery, and 3) disrupt the smoothly functioning administration of LNP services throughout the United States. Amendment 57 resulted from a commercial, arm's-length negotiation that fully complied with NAPM procedures and Commission regulations. The Master Agreements and Amendment 57 advance the public interest, and the Commission should promptly reject Telcordia's Petition.

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**OPPOSITION OF NEUSTAR, INC.**

NeuStar, Inc. ("NeuStar") opposes the Petition of Telcordia Technologies Inc. ("Telcordia") requesting the Commission's unnecessary intervention in the commercially negotiated contracts under which NeuStar provides local number portability ("LNP") administration services for the telecommunications industry.[1] In its Petition, Telcordia strains credulity by asserting that, when NeuStar agreed to modify the existing contracts and reduce prices significantly, it foisted an anticompetitive and over-priced contract amendment upon the North American Portability Management LLC ("NAPM"), the industry consortium that oversees LNP administration. In fact, the NAPM is composed of many of the world's largest and most sophisticated carriers, including AT&T, Verizon, Qwest, Sprint, Frontier, T-Mobile and Embarq. NAPM members are experienced negotiators focused on acting in the best interests of their

[1] Petition of Telcordia Technologies, The Petition of Telcordia Technologies, Inc. To Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration, WC Docket No. 07-149 (June 13, 2007) ("Petition"). See FCC Public Notice, Wireline Competition Bureau Seeks Comment on Telcordia Technologies, Inc.'s Petition Regarding Number Portability Administration Services, WC Docket No. 07-149, DA 07-3380 (July 23, 2007).

companies and their customers in obtaining the highest quality of service and lowest price for number portability administration.

By their terms, the LNP administration contracts historically have been, and remain, non-exclusive and allow competitive proposals at any time. The NAPM considered LNP administration proposals from other potential vendors,[2] including Telcordia,[3] but ultimately approached its existing vendor, NeuStar, to renegotiate midterm its contracts as local number portability administrator ("LNPA"). The Telcordia Petition attempts to manipulate the regulatory process to reopen commercial contracts that Telcordia failed to win in the marketplace.

Telcordia offers no legitimate legal or policy reason for the Commission to intervene to overturn contracts that benefit all carriers and consumers, are important to disaster recovery and telephone number conservation and that serve the public interest. NeuStar urges the Commission to reject summarily Telcordia's baseless attempt to undercut the vital role of the industry in overseeing and managing the LNP administration contracts, interfere with commercially negotiated contracts and disrupt the smoothly functioning administration of LNP services throughout the United States.

## I. BACKGROUND

The ability of end users to retain their telephone numbers when they switch service providers has long been recognized as an essential component of local telephone competition. The Commission first examined the issue in earnest in 1995 in a wide ranging Notice of

[2] North American Numbering Council Meeting Minutes at 8 (May 17, 2005), attached as Exh. B to Letter from Dan A. Sciullo, Counsel to NAPM, to Thomas Koutsky, Chairman, North American Numbering Council (Apr. 11, 2007) ("NAPM Letter").

[3] NAPM Letter at 12.

Proposed Rulemaking.[4] Subsequently, and before the Commission acted on the rulemaking, Congress passed the Telecommunications Act of 1996[5] adding Section 251 to the Communications Act of 1934 ("the Act"). New Section 251(b)(2) directed each local exchange carrier "to provide, to the extent technically feasible, number portability in accordance with the requirements prescribed by the Commission."[6]

The Commission, noting that the new Section 251(e)(1) required the Commission to "'create or designate *one or more* impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis,'"[7] implemented its number portability authority by adopting an LNP architecture of regionally-deployed clearinghouse databases "to be administered by *one or more* neutral third parties."[8] It directed the North American Numbering Council ("NANC") "to select as *a* local number portability administrator(s) . . . *one or more* independent, non-governmental entities that are not aligned with any particular telecommunications industry segment. . . ."[9]

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[4] *Telephone Number Portability*, 10 FCC Rcd 12350 (1995) (subsequent history omitted).

[5] Telecommunications Act of 1996, Public L. No. 104-104, 110 Stat. 56 (1996).

[6] 47 U.S.C. § 251(b)(2).

[7] *Telephone Number Portability*, 11 FCC Rcd 8352, 8400 (1996) ("*First LNP Order*"), *recon.*, 12 FCC Rcd 7236 (1997), *recon.*, 13 FCC Rcd 21204 (1998), *recon.*, 13 FCC Rcd 16090 (1998), *recon.*, 14 FCC Rcd 16459 (1999) (quoting 47 U.S.C. § 251(e)(1)) (emphasis added).

[8] *First LNP Order*, 11 FCC Rcd at 8400 (emphasis added). The clearinghouse model is a vital function in the telecommunications industry. It allows competitive and geographically dispersed carriers to perform important functions through a common means of clearing transactions. It also can be the most efficient economic model to provide interoperability, which is so fundamental to universal communications.

[9] *Id.* at 8401 (emphasis added). The NANC is a federal advisory committee established by the Commission to advise the Commission and make recommendations fostering efficient and impartial numbering administration. 47 C.F.R. § 52.5(b).

Pursuant to the Commission's instruction, the NANC established the Local Number Portability Administration Selection Working Group ("LNPA Selection Working Group"), consisting of telecommunications carriers and carrier associations, state public service commission representatives, and other service providers.[10] By the time that the LNPA Selection Working Group was organized, industry efforts already were well underway to select LNPA(s).[11] The carriers organized themselves into seven regional limited liability companies ("LLCs")[12] and issued Requests For Proposals ("RFPs") to vendors to serve as LNPA in each region. Each regional LLC conducted a separate, rigorous competitive bidding process. The LLCs screened bidders, subjecting them to a thorough pre-qualification procedure, and negotiated separate but virtually identical Number Portability Administration Center ("NPAC") database "Master Agreements" with the respective winning bidders in each region.[13]

NeuStar's predecessor, Lockheed-Martin IMS ("LMIMS"),[14] won the bids in four regions, and Perot Systems ("Perot") won in three. In each region, there was one LNPA. The

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[10] *Telephone Number Portability*, 12 FCC Rcd 12281, 12289 & n.37 (1997) ("*Second LNP Order*") (subsequent history omitted).

[11] North American Numbering Council, Local Number Portability Administration Selection Working Group Report §§ 2.5.1, 2.6.1 (Apr. 25, 1997) ("LNPA Selection Working Group Report" or "Report").

[12] The industry ultimately found the seven regional LLC structure to be unwieldy and consolidated the seven regional LLC structure into one LLC, the NAPM, but maintained the seven regional contracts. *See* NAPM Letter at 3 & n.3.

[13] *See, e.g.*, Agreement for Number Portability Administration Center/Service Management System Between Lockheed Martin IMS and Northeast Carrier Acquisition Company, LLC (Nov. 7, 1997) ("Northeast Master Agreement").

[14] Because LMIMS's parent company, Lockheed Martin, intended to purchase a telecommunications carrier in 1999, its numbering administration responsibilities were transferred to a separate entity, NeuStar, to preserve the numbering administrator's neutrality -- an overarching principal for the LNPA.

LNPA Selection Working Group recommended that NANC approve the LLCs' vendor selections, and NANC approved and forwarded those recommendations to the Commission. In adopting the recommendations, the Commission noted significantly that "we do not, at this time, adopt a requirement that two or any other number of entities serve as local number portability database administrators."[15] Accordingly, the Commission's implementing orders and rules requiring "one or more" LNPAs conclusively rebut Telcordia's theory that a single nationwide LNPA violates Commission policy.[16] Moreover, no party, including Telcordia's predecessor, Bellcore, objected to the recommended single LNPA in each region.[17]

The regional LLCs that initially selected Perot subsequently found that it was unable to perform its LNPA duties and replaced Perot with LMIMS.[18] The decision to change vendors -- thereby reducing the number of number portability administrators to a single entity nationwide -- was unanimously approved by NANC as "essential in successfully implementing [number portability] in these regions"[19] and was accepted without comment by the Commission.[20] With the 1998 Phase I deadline for LNP implementation approaching, LMIMS was able to take Perot's place in the three regions with only minimal delays. The Commission's acceptance of

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[15] *Second LNP Order*, 12 FCC Rcd at 12298-303, 12306.

[16] *See, e.g.*, 47 U.S.C. § 251(e)(1). *See also* Petition at 3-6.

[17] *See Second LNP Order*, 12 FCC Rcd at 12303; LNPA Selection Working Group Report § 6.2.4.

[18] *See Telephone Number Portability*, 13 FCC Rcd 11701, 11709-10 (1998) ("*Third LNP Order*") (subsequent history omitted).

[19] *Telephone Number Portability*, 13 FCC Rcd 10811, 10815 n.25 (CCB 1998) (subsequent history omitted) (quoting Letter from Alan C. Hasselwander, Chairman, North American Numbering Council, to A. Richard Metzger, Jr., Chief, Common Carrier Bureau, FCC (February 20, 1998)).

[20] *See Third LNP Order*, 13 FCC Rcd at 11709-10.

the LLCs' replacement of Perot Systems by LMIMS, resulting in a single nationwide LNPA, additionally rebuts Telcordia's single LNPA theory.

## II. NEUSTAR HAS SERVED THE PUBLIC INTEREST BY FULFILLING ITS LNP CONTRACT REQUIREMENTS AND ADVANCING NUMBER PORTABILITY GOALS.

NeuStar's administration of the regional NPAC databases has well served the telecommunications industry, consumers and the public interest. NeuStar has efficiently administered the complex and difficult process of implementing number portability between carriers. NeuStar competed against other companies to provide these clearinghouse services, and has been providing these services at continually decreasing prices and continually increasing value. Congress' and the Commission's directives on number portability have been fully implemented to the benefit of competition and consumers.

The NPAC database is essential to routing correctly telecommunications traffic throughout our nation and is "'a key emergency service recovery tool'"[21] "during a catastrophic network failure."[22] Under NeuStar's management, the NPAC databases have expanded to allow for, among other functions, number pooling and wireless number portability. Through the industry's direct oversight role, the NPAC database has continued to evolve to stay ahead of changes in the industry. In its role as LNP administrator, NeuStar has ensured the seamless

[21] State of New York Public Service Comm'n Release at 2, *New York Trial Establishes Recovery Mechanism for Major Service Interruptions*, 06010/03C0922 (Feb. 8, 2006) (quoting Commissioner Thomas J. Dunleavy).

[22] *Id.* at 1. *See also* Letter from Robert C. Atkinson, NANC Chair, to Thomas Navin, Chief, Wireline Competition Bureau, FCC, *et al.*, at 2-5 (Jan. 5, 2006), attachment, North American Numbering Council, *Interim Report on Out of LATA Porting & Pooling for Disaster Relief After Hurricane Katrina* (Nov. 16, 2005) (use of NPAC databases to port numbers out of disaster area); Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, *Report and Recommendations to the Federal Communications Commission* at 23, 33 (June 12, 2006).

functioning of this database, rapidly integrated new technologies into the portability process, and resolved expeditiously number portability issues, including disputes between carriers.

Significantly, Telcordia's objections do not challenge or criticize NeuStar's administration of the NPAC. It is uncontested that NeuStar's performance under the NPAC Master Agreements has been exemplary, as demonstrated by its customers' strong rebuttal of Telcordia's claims.[23] Nor does Telcordia assert that NeuStar has provided number portability services in a discriminatory manner.

NeuStar consistently exceeds industry expectations for technical quality of service. During the time at issue in Telcordia's Petition,[24] and continuing to the present, NeuStar's service has been exemplary. During the period from 2005 to the present, NeuStar has met or exceeded the Service Level Requirements under the Master Agreements 99.5 percent of the time. In addition, in 2005 and 2006, NeuStar achieved scores of 4.0 and 4.4, respectively, out of a 5.0 scale on its annual benchmarking audit of NPAC operational activities, which include equipment, security, software release management, back-up and recovery, and business continuance.[25] This continuing excellent service has been provided during a time of increasing system complexity and transaction volume. Such high quality service performance is

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[23] *See* NAPM Letter.

[24] The time frame at issue in the Petition is the period when the NAPM was evaluating other vendors' presentations and then renegotiating its contract with NeuStar, culminating with Amendment 57.

[25] This benchmark audit compares NeuStar's operations against companies of similar size and services and is conducted by a third party auditor. A score of 3.0 indicates meeting industry best practices, 4.0 indicates exceeding industry best practices, and 5.0 indicates best in class. The 2007 benchmark audit is currently underway.

characteristic of a supplier committed to maintaining its competitive edge by providing high value, quality services at fair market-based prices.

In addition, NeuStar has complied with rigorous and unique neutrality requirements.[26] To maintain its neutrality, as required by the Commission and the Master Agreements, NeuStar has implemented layers of procedures and protections. Under the Master Agreements, NeuStar is required to be a "Neutral Third Party."[27] As the LNPA, NeuStar has agreed to adhere to a Code of Conduct and undergo regular neutrality audits.[28] The audit reports are provided to the NAPM. Included within the scope of those audits is NeuStar's compliance with its Code of Conduct, which NeuStar implemented to buttress the Commission's neutrality regulations.[29] To enable an auditor to issue a positive opinion as to compliance with the neutrality requirements and the Code of Conduct, NeuStar created a program of internal controls, with objective and measurable policies and procedures, designed to ensure its compliance with its neutrality

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[26] *See* NeuStar, Inc. Prospectus at 61, 67, SEC Registration No. 333-123635 (June 28, 2005).

[27] Under the Master Agreements, "[t]he term 'Neutral Third Party' means an entity which (i) is not a telecommunications carrier . . . ; (ii) is not owned by, or does not own, any telecommunications carrier; provided that ownership interests of five percent . . . 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." Northeast Master Agreement at Art. 1.30. In fact, NeuStar was created when LMIMS's numbering administration responsibilities were spun off into a separate entity to preserve the numbering administrator's neutrality at a time when LMIMS's parent, Lockheed Martin, was poised to purchase a telecommunications carrier. *See Request of Lockheed Martin Corp. and Warburg, Pincus & Co. for Review of the Transfer of the Lockheed Martin Communications Industry Services Business*, 14 FCC Rcd 19792, 19796-97 (1999) ("*Warburg Transfer Order*").

[28] As the North American Numbering Plan Administrator, NeuStar is further required to undergo quarterly neutrality audits from a neutral third party which are separate and distinct from the audits under the Master Agreements. These audit results are provided to the Commission and the NANC. *Warburg Transfer Order*, 14 FCC Rcd at 19813-14.

[29] *Id.* at 19813. *See* 47 C.F.R. § 52.12(a).

obligations.[30] The internal controls include quarterly neutrality certifications that must be completed by all NeuStar directors, officers and employees. All NeuStar personnel receive annual training to familiarize themselves with the internal controls and to ensure that they complete their required certifications.

The Commission earlier recognized that NeuStar's predecessor, LMIMS, was a "neutral third party," thereby ensuring against anticompetitive conduct.[31] Since NeuStar replaced LMIMS as the LNPA, it has assiduously maintained its neutrality. Multiple extensions of the Master Agreements by the broad-based LLCs and NAPM confirm NeuStar's demonstrated neutrality and pro-competitive performance of its LNPA functions.

## III. AMENDMENT 57 TO THE MASTER AGREEMENTS BENEFITS ALL PARTIES INVOLVED IN NUMBER PORTING.

### A. Amendment 57 Resulted From A Commercial, Arm's-Length Negotiation That Fully Complied With NAPM Procedures.

Since the Master Agreements were first executed with NeuStar's predecessor, the parties have negotiated and approved multiple modifications and enhancements to the NPAC database to respond to regulatory, industry, technological and financial changes. These modifications to the Master Agreements have implemented improvements to the NPAC database, substantially reduced prices and improved service level requirements monitoring.[32]

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[30] *See* Letter from Frank W. Krogh, Counsel to NeuStar, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 92-237 (Dec. 17, 1999), attachment, Memorandum from NeuStar, Inc. to L. Charles Keller, Chief, Network Services Division, FCC, *Understanding As To Neutrality Audit Procedures In CC Docket No. 92-237 And NSD File No. 98-151* (Dec. 17, 1999).

[31] *Second LNP Order*, 12 FCC Rcd at 12349, 12351.

[32] NAPM Letter at 3-4.

The most recent price reductions were implemented in the negotiated modification challenged in the Petition, the so-called Amendment 57.[33] Including Amendment 57, NeuStar and the NAPM have agreed three times -- in 2000, 2003 and 2006 -- to reopen the Master Agreements midterm to provide significant price reductions and to extend their term.[34] These amendments to the Master Agreements themselves demonstrate the arm's-length relationship between the NAPM and its vendor. Since the implementation of number portability, the fee for porting transactions has dropped by nearly 60 percent.

Despite the selection of a single LNPA in each of the regions, the LLCs and the NAPM have ensured that the Master Agreements remain non-exclusive. Article 28 of the Master Agreements provides that the LNPA is not granted "the exclusive right to provide NPAC . . . Services" by the Master Agreements and thus affords the NAPM sufficient flexibility to introduce additional vendors at any time.[35] Prior to opening midterm negotiations with NeuStar

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[33] Amendment to Contractor Services Agreement for Number Portability Administration Center/Service Management System Extension and Modification between NeuStar, Inc. and the North American Portability Management LLC, as successor to the Northeast Carrier Acquisition Co., LLC, Amendment No. 57 (NE) (Sept. 21, 2006) ("Amendment 57").

[34] The initial term of the NPAC Master Agreements was to expire in 2003, with an option to renew. *See, e.g.,* Northeast Master Agreement at Art. 3. The Master Agreements were extended by Statement of Work ("SOW") 25, executed in 2000, extending them through May 31, 2006, and again, by Amendment 42, executed in 2003, extending them through May 31, 2011. *See, e.g.,* Statement of Work For T/N Price Reduction and Contract Update and Extension between NeuStar, Inc. and the North American Portability Management LLC, as successor to the Northeast Carrier Acquisition Co., LLC, SOW 25NE § 4.1 (Dec. 1, 2000) ("SOW 25"); Extension Agreement for Agreement for Number Portability Administration Center/Service Management System between NeuStar, Inc. and the North American Portability Management LLC, as successor to and on behalf of the Northeast Carrier Acquisition Company, LLC, Amendment No. 42, § 4 (Oct. 22, 2003) ("Amendment 42"). *See also* Petition at 16. Both extensions were accompanied by significant price reductions. *See* SOW 25, § 32.5; Amendment 42, § 5 & Att. 1.

[35] *See, e.g.,* Northeast Master Agreement at Art. 28. *See also* NAPM Letter at 11.

regarding Amendment 57, the NAPM entertained proposals from other industry vendors. Several companies, including Telcordia in 2005, made presentations to the NAPM, but it ultimately decided to seek to reopen and renegotiate its Master Agreements with NeuStar.[36]

Beginning in March 2006, and over the course of six months, the NAPM and NeuStar negotiated at arm's length the agreement that became Amendment 57, providing for successive substantial reductions in the per-transaction porting fees paid by all carriers. As part of this agreement the parties agreed, *inter alia*, to a four-year extension of the Master Agreements, from 2011 to 2015.[37] This four-year extension is analogous to prior extensions associated with pricing reductions. The NAPM approved Amendment 57 by a supermajority vote, as required under its procedures, and on September 21, 2006, the parties executed the seven identical agreements, one for each of the regions served by the NPAC.[38]

### B. Amendment 57 Benefits The Industry, Consumers, And The Public Interest.

The relief sought by Telcordia would deprive the industry and consumers of the technical and economic benefits of the Master Agreements as extended by Amendment 57. The revised Master Agreements deliver immediate and future cost savings to telecommunications providers and their customers. Although NeuStar was under no obligation to do so, it agreed with NAPM

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[36] Telcordia approached NAPM at NAPM's November 2004 board meeting to discuss a possible bid submission. *See* Excerpt of E-Mail correspondence attached as Exh. C to NAPM Letter. Telcordia presented a proposal to NAPM on March 16, 2005. Petition at 17; NAPM Letter at 12 & n.8.

[37] Amendment 57, § 7.

[38] Letter from Michael O'Connor, Vice President, Customer Relations, NeuStar, Inc., to Thomas Koutsky, Chairman, NANC, at 4 (Apr. 13, 2007).

to negotiate an amendment to the Master Agreements four years before they expired to provide the industry with substantial price reductions.

Per transaction NPAC prices have plunged nearly 60 percent over the past decade, including the rate reduction that became effective at the beginning of 2007, saving the industry and consumers hundreds of millions of dollars. Initially, the price per porting transaction was as high as $2.16, depending on volume.[39] Under the pricing schedule that became effective under Amendment 57 as of January 1, 2007, the porting transaction rate is $0.91.[40] Amendment 57 has already saved the industry $13 million and is on track to save the industry approximately $30 million in 2007 alone, with even greater annual reductions expected during the term of the Master Agreements, depending on transaction volumes.[41] By its terms, abrogation of Amendment 57 would result in the loss to the industry of these negotiated savings and would return the industry to the higher prices in effect prior to Amendment 57.[42]

In contrast to these demonstrable cost savings, Telcordia's pleading is based upon the unsubstantiated assertion that it could save the industry $60 million a year in the event that the Master Agreements are subjected to a new round of competitive bidding. Yet, according to the NAPM, when Telcordia made its 2005 presentation to the NAPM, the NAPM determined that

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[39] *See, e.g.*, Northeast Master Agreement, Exh. E, at E-1, Pricing Schedules, Schedule 1, Service Element Fees/Unit Pricing ("Northeast Agreement Pricing Schedules").

[40] *Compare* Northeast Agreement Pricing Schedules *with* Amendment 57 at 22 (Att. A, Exh. E, Schedule 1) (porting fee effective January 1, 2007 is $0.91, nearly a 60 percent reduction from $2.16).

[41] *See* Amendment 57 at 22 (Att. A, Exh. E, Schedule 1), 28-29 (Att. A, Exh. E, Att. 1) (additional price reductions effective January 1, 2008).

[42] *See id.* § 13.2.

> 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.[43]

Similarly, Telcordia failed to persuade NANC that Amendment 57 was not in the public interest.[44] Abrogating Amendment 57 to the Master Agreements and requiring a new competitive bidding process would be needlessly disruptive to local number portability operations and would achieve no significant public interest goal. Moreover, there would be no guarantee that another vendor could: (1) qualify as a "neutral third party;" (2) deliver any savings over the existing pricing structure; and (3) deliver a highly technical and complex system that would seamlessly enable the routing of the millions of calls handled by the current architecture. The industry negotiates with vendors for the term, price, reliability and service levels for these ongoing clearinghouse services. The industry is clearly in the best position to make these commercial determinations.

### C. Amendment 57 Preserves Non-Exclusivity.

Adoption of Amendment 57 has no effect on the Master Agreements' provision that allows the NAPM to continue to evaluate market conditions and consider different vendors. Contrary to Telcordia's assertions, Amendment 57 does not lock in NeuStar as the exclusive

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[43] NAPM Letter at 12

[44] *See* Petition at 19 n.28.

provider of NPAC database services or preclude competition in numbering administration services. Rather, Amendment 57 continues the non-exclusivity of the Master Agreements.[45]

Telcordia objects to the Amendment 57 provision that may reduce the deep pricing discounts implemented by Amendment 57.[46] The transaction price modifications, if triggered, would simply return NeuStar's porting transaction fees closer to, but never above, the pre-Amendment 57 levels. This provision would apply only until the end of 2011, the period covered by the pre-Amendment 57 Master Agreements.[47] Thus, any upward price adjustments expire at the end of 2011, returning the industry to the full price reductions provided by the pricing schedules to Amendment 57, well ahead of the expiration of the Master Agreements in 2015.[48] Amendment 57 paired this conditional upward pricing provision with an equivalent

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[45] *See* Northeast Master Agreement at Art. 28; Amendment 57, § 13.1 (keeping "in full force" all provisions of the Master Agreements not expressly modified by Amendment 57); NAPM Letter at 11.

[46] Amendment 57, § 8.3. Contrary to Telcordia's assertions, only certain activities trigger the pricing adjustment provisions. For example, Amendment 57 provides that participation of a NAPM-member company in industry forums or trials for an alternate telephone number-level routing administration capability does *not* constitute customer activity triggering an adjustment in the discount. Amendment 57, § 8.3(b). Similarly, although the NAPM soliciting bids before 2012 would trigger this pricing adjustment provision, reviewing, evaluating and entertaining an unsolicited proposal from another vendor would *not* trigger an adjustment, nor would discussions or negotiations with another vendor. *See id.* After January 1, 2008, any action that might otherwise trigger a pricing adjustment will *not* have any such effect if it occurs after the porting transaction service volume reaches a predetermined level for a 12-month period. *Id.* § 8.3(c)(i). Further, the NAPM retains the right to terminate the Master Agreements if NeuStar breaches its material obligations under the contract. *See* Northeast Master Agreement at Art. 23.1 (a) (NAPM may terminate Master Agreement if NeuStar defaults), Art. 16.5 (defining default); Amendment 57 § 13.1 (keeping in force all provisions of the Master Agreements not specifically amended).

[47] *See* Petition at 9 (upward pricing adjustment could raise rates for porting transactions "nearly to where they were prior to the adoption of Amendment 57").

[48] Amendment 57, § 8.3(a). At that point, the prices specified in the schedules to Amendment 57 govern. *See* Amendment 57 at 28-29 (Att. A, Exh. E, Att. 1).

conditional *downward* pricing provision providing even greater price reductions until the end of 2011 in the event that *NeuStar* seeks to renegotiate pricing before 2012.[49]

Providing an extended term for lower prices is commonplace in commercial negotiations. Furthermore, the symmetrical upward and downward conditional pricing adjustment provisions in Amendment 57 are the type of routine safeguard that is commonly negotiated when parties seek to secure the benefit of their bargain for the term of the contract. This is part of a classic bargaining quid pro quo that provided another substantial price reduction for the industry while granting NeuStar an extended term, and giving both parties a temporary and limited incentive not to seek renegotiation again in the near term. Moreover, as the NAPM has explained, "[b]oth competition and the ability to adopt new solutions are preserved to the exact same extent as they existed before Amendment No. 57, without change."[50] The balanced pricing adjustment provisions in Amendment 57 and the facts of the parties' commercial relationship and comparative bargaining power fully refute Telcordia's competitive and public interest claims set forth in the Petition.

Telcordia advances not a single legitimate reason that would support a Commission decision to force NAPM to give up the real benefits of the modified Master Agreements and reopen them in anticipation of unsubstantiated, hypothetical benefits bestowed by a Telcordia bid.[51] The Commission should find that the NPAC Master Agreements, including Amendment 57, serve the public interest and summarily dismiss the Petition.

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[49] *Id.* § 8.4.

[50] NAPM Letter at 9.

[51] Telcordia's suggestion that the Commission pick and choose those provisions of Amendment 57 that should remain intact and those that should be abrogated (Petition at 22) would lead to a "'heads I win, tails you lose' . . . . unfair and harmful result." *IDB Mobile*

*fn cont'd*

## IV. TELCORDIA FAILS TO DEMONSTRATE ANY LEGAL OR POLICY BASIS FOR ABROGATING THE NPAC MASTER AGREEMENT EXTENSION.

Parties seeking Commission regulatory intervention to modify commercially negotiated contracts must meet a "strict" standard.[52] Parties must demonstrate not only, as a threshold matter, that the contracts "are 'unlawful' according to the terms of the governing statute,"[53] but they also must meet a "much higher" standard[54] -- namely that there is "a compelling public interest" in contract modification.[55] Thus, a party must demonstrate significant "harm to the public interest,"[56] not merely "private injury."[57] Telcordia has utterly failed to establish either that Amendment 57 is "unlawful" or that it results in significant "harm to the public interest."[58]

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*Communications, Inc. v. Comsat Corp.*, 16 FCC Rcd 11474, 11482 (2001) ("*IDB*"). The parties had existing Master Agreements with a remaining term of five years. At the request of the NAPM, NeuStar voluntarily entered into negotiations to amend the Master Agreements. The result of those arm's-length negotiations, Amendment 57, should be maintained in its entirety.

[52] *ACC Long Distance Corp. v. Yankee Microwave, Inc.*, 10 FCC Rcd 654, 657 (1994) ("*ACC*").

[53] *Western Union Telegraph Co. v. FCC*, 815 F.2d 1495, 1501 n.2 (D.C. Cir. 1987) ("*Western Union*"). *See also, AT&T Corp. Country Direct Service Agreement with Telecommunicaciones Internacionales de Argentina Telintar, S.A.*, 11 FCC Rcd 13893 (1996) (cited in the Petition at 20-21) (voiding provision in operating agreement prohibiting resale in violation of Section 201 of the Act).

[54] *IDB*, 16 FCC Rcd at 11480.

[55] *Ryder Communications, Inc. v. AT&T*, 18 FCC Rcd 13603, 13614 (2003) ("*Ryder*").

[56] *IDB*, 16 FCC Rcd at 11480.

[57] *ACC*, 10 FCC Rcd at 657.

[58] VeriSign, Inc. also supports Telcordia's Petition to further its own competitive opportunities, without any showing of public interest harm justifying the extraordinary relief sought. *See* Support Statement of VeriSign, Inc., *The Petition of Telcordia Technologies, Inc. To Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration*, WC Docket No. 07-149 (June 25, 2007) ("VeriSign Statement").

Contrary to Telcordia's assertions, Amendment 57 does not violate antitrust law, Section 201(b) of the Act or any Commission policy.[59] Amendment 57 is a commercially reasonable agreement negotiated by the parties in good faith at arm's length that benefits the telecommunications industry and consumers by substantially lowering local number portability transaction prices. Telcordia falls far short of a viable legal rationale to justify the Commission taking the radical step of intervening in the smoothly functioning NAPM contracting process.

### A. Telcordia Fails To State An Antitrust Claim.

The Commission should reject the suggestion by Telcordia that Amendment 57 violates the antitrust laws.[60] Neither the LLCs' well-considered decisions to award the LNP administration contracts to NeuStar, nor NAPM's subsequent decision to modify and extend the Master Agreements in Amendment 57, constitute an "agreement in restraint of trade" in violation of Section 1 of the Sherman Act. Section 1 is primarily aimed at "horizontal" agreements between direct competitors, not at discrete "vertical" agreements between a single buyer and a single seller. Examples of typical Section 1 violations are price-fixing, market allocation or non-compete agreements. The contract Telcordia challenges is none of these.

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[59] Petition at 11-15.

[60] *Id.* at 11-12. Fundamentally, Telcordia's complaint is not that the competitive process has been harmed by Amendment 57 but that Telcordia has been harmed by its failure to win all or part of the NAPM business. But harm to a competitor, like Telcordia, is not harm to competition. *See e.g.*, *Atlantic Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 338 (1990); *Cargill, Inc. v. Monfort of Colo., Inc.*, 479 U.S. 104, 109-10 (1986); *Brown Shoe Co. v. United States*, 370 U.S. 294, 320 (1962); *Interface Group v. Massachusetts Port Authority*, 816 F.2d 9, 10 (1st Cir. 1987) (Breyer, J.) (anticompetitive actions are not those "that merely injure individual competitors, but [are] actions that harm the competitive process, a process that aims to bring consumers the benefits of lower prices, better products and more efficient production methods") (citation omitted).

Similarly, NeuStar is not a monopolist within the meaning of the antitrust laws, or in any reasonable commercial sense. Contrary to Telcordia's portrayal of NeuStar forcing Amendment 57 on the NAPM, NeuStar has neither "monopoly power" nor any other commercial leverage to force the NAPM to accept an "exclusive contract" against its will.[61] Amendment 57 was the result of arm's-length negotiations between NeuStar and one of the largest purchasers of database management services in the world. NAPM represents the entire U.S. telecommunications industry, with about 4,000 carriers and total combined revenues of $298 billion.[62] As a very large buyer, the NAPM has been able to obtain concessions from NeuStar throughout the term of the Master Agreements, including the deep discounts agreed to in Amendment 57.

Winning the NPAC database contracts hardly constitutes a willful "bad act" of monopolization, any more than the American Bridge/Kraemer joint venture could be said to "monopolize" the Washington, D.C. Woodrow Wilson Bridge Project, a similarly high value, long term contract, by winning the bid process over its various rivals.[63] The antitrust laws exist to protect consumers and buyers. They do not require large buyers such as NAPM to "spread their business around" or prohibit NAPM from selecting a single vendor of its choice. In any

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[61] Petition at 12.

[62] FCC News Release, *FCC Releases Annual Telecommunications Industry Revenue Report* (June 13, 2007).

[63] *See, e.g.*, Tom Ichniowski, *American Bridge - Kraemer Team Apparent Low Bidder on Wilson Bridge Drawspan*, ENR.com, Nov. 8, 2002, *at* http://enr.construction.com/news/transportation/archives/021108.asp. It is almost inconceivable that one of the losing bidders would later, mid-project, convince a regulatory body to order the project managers to re-open the bidding based only on the disgruntled bidder's belief that it would be a better choice to complete all or part of the project.

event, Telcordia should not be permitted to seek regulatory intervention to reopen a commercial contract negotiation that has been resolved to the mutual satisfaction of both parties.

### 1. NeuStar Does Not Possess Market Power In any Relevant Antitrust Market.

A predicate for any antitrust claim, whether a "rule of reason" challenge under Section 1 or a monopolization claim under Section 2, is defining a relevant product market[64] and geographic market[65] where competition is harmed. Nowhere in its Petition does Telcordia attempt to define a relevant antitrust market. This is not surprising, because it would be almost self-evident from any reasonable market definition that NeuStar has numerous actual and potential competitors.

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[64] Products or services are in the same product market if they are "reasonably interchangeable by consumers for the same purposes." *United States v. E.I. DuPont de Nemours & Co.*, 351 U.S. 377, 395 (1956). In this case, if NAPM could reasonably substitute the services provided by other database management firms, those services would be included in the relevant product market. Telcordia obviously considers its services to be in the same relevant product market with NeuStar's. Likewise, VeriSign, Inc. considers itself capable of providing "number portability services for the nation," VeriSign Statement at 2, and thus would be included in the relevant market. In addition, there are numerous other providers of database management services whose offerings must also be included with those of NeuStar, Telcordia and VeriSign. Among those providers are Oracle, IBM, Computer Sciences Corp., Syniverse, Hewlett-Packard, BearingPoint, Accenture and Cap Gemini.

[65] The geographic market is defined as the area in which there exists "the set of sellers to which a set of buyers can turn for supplies at existing or slightly higher prices," *A.A. Poultry Farms v. Rose Acre Farms*, 881 F.2d 1396, 1403 (7th Cir. 1989), *cert. denied*, 494 U.S. 1019 (1990), or the area in which "a potential buyer may rationally look for . . . goods and services." *Pennsylvania Dental Ass'n v. Medical Serv. Ass'n*, 745 F.2d 248, 260 (3d Cir. 1984), *cert. denied*, 471 U.S. 1016 (1985). In this case, NAPM could rationally consider data management firms located anywhere in the United States, and probably the world.

Rather than define a relevant market, Telcordia's Petition implicitly argues that the NAPM contract is, standing alone, a relevant market.[66] Courts generally reject markets defined by the purchases of a single buyer.[67]

### 2. Telcordia's Reliance On *LePage's* Is Misplaced.

Telcordia cites *LePage's* for the proposition that "exclusive dealing" by a monopolist can violate Section 2.[68] In *LePage's*, 3M controlled 90 percent of the U.S. "transparent tape" market, and was alleged to have engaged in a pattern of exclusive contracts with its customers, including numerous major retailers such as Wal-Mart, K-Mart, Target, Sam's Club, Staples and others.[69] In stark contrast, NeuStar's national share of data management services is trivial, and Telcordia is complaining about its loss of a single contract -- a contract that it had every opportunity to win, but did not. [70]

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[66] Without explanation, Telcordia asserts that "[NeuStar] has 100% of the market . . ." (Petition at 11-12.) Presumably Telcordia means that NeuStar won the contract at issue, but it offers no explanation as to how that contract could be a relevant antitrust market.

[67] *Tampa Electric Co. v. Nashville Coal Co., et al.*, 365 U.S. 320 (1961); *Discon Inc. v. NYNEX Corp.*, 86 F. Supp 2d 154, 160-61 (W.D.N.Y. 2000), (rejected plaintiff's market definition of "telephone equipment removal services [provided] for NYNEX," and stated that "it is firmly settled that a product market ordinarily cannot be defined in terms of the purchases of a single buyer" but "must encompass all the sellers of the particular product at issue, as well as reasonable substitutes, regardless of who the seller of those competing offerings currently have as their customers"); *Tanaka v. University of S. Cal.*, 252 F.3d 1059, 1065 (9th Cir. 2001) ("[b]y attempting to restrict the relevant market to a single athletic program in Los Angeles based solely on her own preferences [plaintiff] has failed to identify a relevant market for antitrust purposes").

[68] *LePage's Inc. v. 3M*, 324 F.3d 141 (3d Cir. 2003) ("*LePage's*"). *See* Petition at 12.

[69] *LePage's*, 324 F.3d at 154-158. 3M was also alleged to have tied products together by bundling sales of competitive products with sales of its monopoly product, transparent tape. *Id.* at 154.

[70] Telcordia's reliance on *United States v. Visa U.S.A., Inc., et al.*, 344 F.3d 229 (2d Cir. 2003), is even further off the mark. Petition at 11. The Visa case involved a horizontal agreement among competing banks that none of the banks would issue American Express or

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### 3. The Contract Is Lawful And Is Not Anticompetitive.

Telcordia claims that, under the terms of Amendment 57, it would be difficult for Telcordia to induce NAPM to transfer some of its business to Telcordia before the end of the contract period. But the relevant issue is whether the contract itself is anticompetitive and illegal. It is not. The contract is a commonplace, vertical services contract that was awarded through a competitive bid process. NeuStar had no market power or other leverage over NAPM when it won the contract, and NAPM had no incentive to exclude Telcordia or any other bidder from the data management services market, or otherwise do commercial harm to any of them.

## B. Telcordia Fails To Establish Any Statutory Violations Under The Communications Act.

Telcordia incorrectly argues that the conditional upward pricing adjustment provision in Amendment 57 violates the "just and reasonable" rate requirement, citing a case involving the allocation of common costs under Section 201(b) of the Act.[71] As an initial matter, however, Section 201(b) governs the rates, terms and conditions of common carrier telecommunications services.[72] There is no parallel statutory requirement for rates for non-telecommunications services in numbering administration contracts. Moreover, because the porting transaction prices under Amendment 57, including the conditional upward adjustment, were the prices set through

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Discover cards. Not surprisingly, the court found that the banks, collectively, had market power in the "general purpose card market," and that the horizontal agreement not to issue competing cards was unreasonable under Section 1. Telcordia's Petition involves no horizontal non-compete agreements, and NeuStar has no market power in any properly defined relevant market.

[71] *MCI Telecommunications Corp. v. FCC*, 675 F.2d 408 (D.C. Cir. 1982) (cited in the Petition at 12 n.18).

[72] 47 U.S.C. § 201(b) (covers "charges, practices, classifications, and regulations for and in connection with" interstate or foreign "communication service" provided by "a common carrier").

hard bargaining between NeuStar and the NAPM "in a properly functioning competitive market," they satisfy the "just and reasonable" standard of Section 201(b).[73]

The contract modification cases cited by Telcordia all involve the application of the *Sierra-Mobile* doctrine to common carrier telecommunications services.[74] None involves other categories of services provided *to* telecommunications carriers *by* non-carriers. The Commission has not applied its contract modification authority to non-telecommunications services provided *to* carriers. The numbering administration cases cited by Telcordia also fail to provide the clear statutory predicate Telcordia claims.[75] Telcordia has cited no case holding or even implying that any provision in Amendment 57 meets the "unlawful" prong of the stringent contract modification standard under the Communications Act.[76]

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[73] *AT&T Corp. v. Business Telecom, Inc.*, 16 FCC Rcd 12312, 12324 (2001), *recon. denied*, 16 FCC Rcd 21750 (2001). *See* discussion of antitrust issues in Part IV.A *supra*.

[74] *See, e.g., Western Union* and other *Sierra-Mobile* cases discussed in the Petition at 18-21.

[75] Petition at 13-15. In fact, the Commission has never found that competitive bidding for *any* numbering administration service contract is statutorily required; it has approved a competitive bidding requirement for other numbering administration functions only as a discretionary policy choice. *See, e.g., Numbering Resource Optimization*, 15 FCC Rcd 7574, 7641 (2000) ("We need not resolve whether competition is required") (cited in the Petition at 13-15).

[76] *Western Union*, 815 F.2d at 1501 n.2 (contract rates must be "unlawful" to be subject to agency modification). Telcordia also suggests that Amendment 57 "arguably violates" the Competition in Contracting Act, 41 U.S.C. § 253(a)(1)(A) ("CICA"). Petition at 18 n.23. It is well settled, however, that a contract "that does not involve the delivery of goods or services [to the government]" falls outside the scope of the CICA's competitive bidding requirements. *See, e.g., White Sands Concessions, Inc.*, B-295932, 2005 U.S. Comp. Gen. Lexis 84 (2005) ("*White Sands*") (a contract to provide concession services at a National Park Service center is not subject to CICA's federal procurement requirements). Similarly to the contractor in *White Sands*, NeuStar is not providing the government with goods or services, but rather is providing service under the Master Agreements to the NAPM and telecommunications carriers.

### C. Telcordia Cannot Demonstrate "A Compelling Public Interest" In Contract Modification.

Further, the Commission will not abrogate a commercially negotiated contract if a party shows "only private injury" from a statutory violation,[77] rather than "a compelling public interest in" contract modification.[78] Telcordia cannot meet this "strict" standard under the *Sierra-Mobile* doctrine[79] with a completely unsupported passing reference to alleged savings if the Commission were to abrogate the NPAC Master Agreements and require a new round of competitive bidding.[80]

The Commission's findings in *IDB* focusing on a complaint against Comsat for its allegedly unreasonable refusal to reduce certain contractual satellite service rates illustrates the "heavy burden" assumed by a party attempting to persuade the Commission to modify a commercial contract.[81]

> The threshold for demonstrating sufficient harm to the public interest to warrant contract reformation under the Sierra-Mobile doctrine is much higher than the threshold for demonstrating unreasonable conduct under sections 201(b) and 202(a) of the Act. . . . *[P]rivate* economic harm, standing alone, lacks the substantial and clear detriment to the *public* interest required by the Sierra-Mobile doctrine.[82]

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[77] *ACC*, 10 FCC Rcd at 657.

[78] *Ryder*, 18 FCC Rcd at 13614.

[79] *ACC*, 10 FCC Rcd at 657.

[80] *See* Petition at 14.

[81] *ACC*, 10 FCC Rcd at 657.

[82] *IDB*, 16 FCC Rcd at 11480-81 (emphasis in original).

The contract modification unsuccessfully sought in *IDB* is strikingly parallel to the circumstances presented by the Telcordia Petition.

> Often when parties negotiate a contract . . . there is some give-and-take between issues. . . . We hesitate to reform one element of a contract given the possibility of this type of 'horse trading.'"
>
> . . . .
>
> . . . [T]he record does not permit us to conclude that COMSAT had market power in any material market, which, in turn, precludes us from concluding that COMSAT abused market power such that we should reform the Contract under the Sierra-Mobile doctrine.
>
> In any event, . . . the record . . . suggests no abuse of any market power. For example, *COMSAT agreed to renegotiate the parties' pre-existing 1990 Agreement even though over a year remained on the Agreement's term. In addition, COMSAT agreed in the new Contract to lower rates than were specified in the 1990 Agreement*.[83]

Similarly, NeuStar's accommodation of NAPM's request to renegotiate the Master Agreements five years before their termination in order to secure another price reduction is precisely the type of "give-and-take" that should be left entirely to the marketplace. As the Commission has explained, "linking a price discount to a contractual term is a reasonable, accepted commercial practice, both inside and outside of the telecommunications industry."[84] In the case of Amendment 57, the challenged conditional pricing adjustment "was a *quid pro quo* for the reduced rates that [the customer] had achieved through hard bargaining."[85]

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[83] *Id.* at 11483, 11485 (emphasis added) (citations omitted).

[84] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978, 17403 (2003) ("*Triennial Review Order*"), *Errata*, 18 FCC Rcd 19020 (2003), *vacated and remanded in part on other grounds, affirmed in part, United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004), *cert. denied*, 125 S.Ct. 313, 316, 345 (2004).

[85] *Ryder*, 18 FCC Rcd at 13615.

The absence of public harm is underscored by the parity of the conditional pricing adjustments in Amendment 57. If NeuStar proposes to renegotiate prices anytime before 2012, the downward pricing adjustment provision in Amendment 57 will further reduce porting transaction rates through the end of 2011, further protecting NAPM's interests.[86] Interestingly, Telcordia requests that only the conditional upward adjustment be stricken, which would leave in place the conditional downward adjustment.[87] Telcordia has failed utterly to make the showing required for the drastic remedy of contract modification.[88]

Moreover, as in *ACC*, "even if . . . [the Commission] appl[ies] a lesser standard which considers the private interests of [the parties]," Telcordia "has failed to demonstrate" any actionable individual harm.[89] As NAPM points out, Amendment 57 retains the legal and operational separation of the seven Master Agreements, "so that potential competition is preserved across Service Areas," as well as the non-exclusivity of the Master Agreements

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[86] Amendment 57, § 8.4.

[87] Petition at 22.

[88] Going further afield, Telcordia also cites the Comments of the FCC Office of Inspector General, *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195 (Oct. 18, 2005) ("OIG Comments") and Government Accountability Office, Report to the Chairman, Committee on Energy and Commerce, House of Representatives, *Telecommunications: Greater Involvement Needed by FCC in the Management and Oversight of the E-Rate Program* (Feb. 2005) ("GAO Report"), for the proposition that the Commission must exercise oversight over programs "under its auspices that involve the movement of large amounts of money." Petition at 20. The OIG Comments and GAO Report both address additional Commission oversight to prevent waste, fraud and abuse present in the Universal Service Schools and Libraries Program ("E-Rate Program"). No such issues have been raised regarding LNP administration. Further, because the E-Rate Program requires oversight of the distribution of universal service funds to school and library applicants -- the focus of the OIG Comments and GAO Report -- it implicates fundamentally different statutory responsibilities from LNP administration. In the context of LNP administration, the Commission has exercised diligently and prudently its oversight responsibilities.

[89] *ACC*, 10 FCC Rcd at 657.

without any required minimum volume obligations. These provisions preserve the ability to introduce additional vendors or technologies, notwithstanding that NeuStar cannot be terminated as a vendor unless it breaches its material obligations under the contract.[90] As Telcordia was aware at least as early as 2004, NAPM has always been willing to consider unsolicited proposals from vendors to provide LNP administration services.[91] Telcordia took the opportunity to offer a presentation which the NAPM considered, and now seeks a second "bite at the apple" through an unnecessary and disruptive regulatory intervention by the Commission.

### D. Abrogation Of The Master Agreements And Amendment 57 Would Itself Undermine Commission LNP Policies.

In the *Second LNP Order*, the Commission wisely designated the LLCs to *"provide immediate oversight and management of the [LNPA]."*[92] The Commission incorporated into Section 52.26(a) of the Commission's rules the LNPA Selection Working Group Report,[93] which recommended that NANC approve the LLCs' selections of LNPAs,[94] and adopted NANC's recommendation approving the LNPA Selection Working Group's choices, subject to completion of successful negotiations of the Master Agreements.[95] The Commission also acknowledged that the LLCs "were responsible for negotiating the master contracts with their

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[90] NAPM Letter at 11.

[91] *See* Excerpt of E-Mail correspondence attached as Exh. C to NAPM Letter.

[92] *Second LNP Order*, 12 FCC Rcd at 12346 (emphasis added).

[93] *Id.* at 12356.

[94] Report § 6.2.4.

[95] *Second LNP Order*, 12 FCC Rcd at 12283, 12303.

respective [LNPAs]."[96] Neither NANC nor the Commission took a role in the negotiations or reviewed or approved the Master Agreements. The Commission determined that the Master Agreements need not be filed formally with the Commission, stating that there was no indication that such a requirement "would be preferable to LLC oversight."[97]

The Commission noted that the LLCs are "best able to provide immediate oversight of" the LNPA and have the "greatest expertise regarding the structure and operation of the database for [each] region."[98] Accordingly, "using an entity other than the LLC to provide immediate oversight of the [LNPA] would waste the LLC's valuable expertise and run the risk that necessary modifications to the database system may be delayed."[99] The Commission even rejected a request that the LNPA's budget be subjected to an audit, explaining that "the LLCs 'provide immediate oversight and management of the [LNPAs],'" and "the specifics of NeuStar's budget have been agreed upon in the context of contractual negotiations. . . ."[100] Because the industry, through the NAPM, has such a direct oversight role, the database has continued to evolve to stay ahead of changes in the industry.

The Commission thus recognizes the commercial nature of the LNPA selection, negotiation and oversight process, and the LLCs and the NAPM have exercised responsibly their role of negotiating and executing the Master Agreements and amendments with LNPAs. The

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[96] *Id.* at 12346.

[97] *Id.* at 12303, 12350-51.

[98] *Id.* at 12346.

[99] *Id.*

[100] *Telephone Number Portability*, 17 FCC Rcd 2578, 2593 (2002) (quoting *Second LNP Order*, 12 FCC Rcd at 12345).

Commission has not required the NAPM to issue RFPs or engage in public negotiations for contract extensions and modifications. Significantly, the Master Agreements are non-exclusive and have expressly allowed extensions from the start.[101]

Grant of the extraordinary relief sought by Telcordia thus would be directly contrary to the Commission's decade-long codified policy designating the LLCs to contract with and manage the LNPA. Imposing the requested modification of Amendment 57 on the NAPM and forcing the NAPM to hold competitive bidding for NPAC database services in the middle of the Master Agreements' current term would override the commercially negotiated contract between the NAPM and the LNPA and undermine the NAPM's management of the LNPA. Because the Commission properly designated the LLCs as the contracting entities, and the NAPM has acted consistently with that authority and in the public interest, there is no basis for the Commission to undermine its own LNP administration policy by abrogating Amendment 57 as Telcordia requests.[102]

The Commission has exercised its ultimate oversight authority of number portability prudently and diligently. The Commission's approach to portability management is echoed in repeated statements in which it strongly encourages "parties to attempt to resolve issues regarding number portability . . . among themselves and, if necessary, under the auspices of the

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[101] *See, e.g.*, Northeast Master Agreement at Art. 3, 28.

[102] *Cf. Western Union*, 815 F.2d at 1502 (reversing Commission's abrogation of settlement agreement that it had previously approved). Moreover, because Section 52.26 of the Commission's rules codifies the commercial contractual regime under which the NAPM negotiated and executed the Master Agreements and supervises the LNPA, that provision expressly requires a "rulemaking" to modify the NAPM's "oversight and management" of the LNPA. 47 C.F.R. § 52.26(b)(2).

NANC."[103] Failure to avail itself fully of these fora raises the issue of whether Telcordia's claim is even ripe for Commission review.[104]

These contracts have been carefully negotiated and amended by the industry for a decade. The contracts have resulted in the establishment of a critical, centralized network component that has been modified on numerous occasions to deliver ever-increasing functionality and efficiency while improving service quality. There has been no market or policy failure with respect to LNP administration that requires Commission intervention to remedy.

## V. CONCLUSION

Telcordia has shown no legal or policy reason for the Commission to intervene in this arm's-length contractual relationship. Telcordia has provided no antitrust or other statutory rationale sufficient to justify the extraordinary relief that it seeks. Telcordia failed to persuade NANC that the extension was not in the public interest[105] and has utterly failed to explain why the Commission should reverse its decade-old oversight policy, which Telcordia concedes is

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[103] *Second LNP Order*, 12 FCC Rcd at 12352.

[104] To the extent that the Commission may act on the Telcordia Petition in the absence of a rulemaking, the Petition must be construed as an issue "regarding number portability deployment" under Section 52.26(b)(3) of the Commission's rules, which first must be presented to NANC. NANC must then issue a written report summarizing its recommendation, which must be submitted to the Wireline Competition Bureau. 47 C.F.R. § 52.26(b)(3).

[105] *See* Petition at 19 n.28.

"well-designed," by intervening in a commercial relationship that benefits the industry and consumers.[106] The Commission should dismiss promptly Telcordia's Petition.

Respectfully submitted,

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[106] *Id.* at 21.