

**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)
_____)

WC Docket No. 07-149

REPLY COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”), by its attorneys, hereby replies to the comments submitted in response to the above-captioned petition (“Petition”) of Telcordia Technologies, Inc. (“Telcordia”).¹ In the Petition, Telcordia requests the Federal Communications Commission (“FCC” or “Commission”) to intervene in private contractual issues by invalidating certain portions of a 2006 amendment (“Amendment 57”) to the seven separate Master Agreements between the North American Portability Management LLC (“NAPM”) and NAPM’s current contractor, NeuStar, Inc. (“NeuStar”), for the administration of the Number Portability Administration Center/Service Management System (“NPAC/SMS”) in each of the regions of the former Bell Operating Companies (“RBOCs”). Telcordia also asks the Commission to implement a formal procurement process for number portability administration services. However, the record demonstrates that Telcordia has fundamentally mischaracterized Amendment 57 and failed to articulate any legal or public policy basis for the extraordinary relief it requests. T-Mobile agrees with AT&T, NAPM, and NeuStar that

¹ See Public Notice, “The Petition of Telcordia Technologies, Inc. To Reform Amendment No. 57 and to Order a Competitive Bidding Process for Number Portability Administration,” DA 07-3380, released July 23, 2007 (“*Public Notice*”).

Amendment 57 serves the public interest and that the framework of industry oversight the Commission established is working well. Therefore, T-Mobile respectfully urges the FCC to deny the Petition.

I. TELCORDIA HAS MISCHARACTERIZED THE NATURE AND EFFECT OF AMENDMENT 57.

Telcordia's Petition contains serious misstatements and omissions about Amendment 57 that fundamentally mischaracterize the nature and effect of its provisions.² T-Mobile agrees with AT&T, NAPM, and NeuStar that Telcordia's failure to articulate a basis in fact, law, or policy for the relief it requests becomes immediately apparent once the misstatements and omissions in the Petition are corrected.³

Amendment 57 contains two principal features: (1) a mid-term price reduction for the services NeuStar provides to NAPM, the cost of which is borne by carriers and, ultimately, consumers; and (2) a temporal extension of the Master Agreements. When Amendment 57 was signed in 2006, the underlying Master Agreements were due to expire on December 31, 2011 ("Original Expiration Date"). Amendment 57 reflects NeuStar's consent to a mid-term volume-based discount in its per-transaction porting rates for the remaining term of the amended Master Agreements in exchange for an extension of the Master Agreements until 2015 (*i.e.*, a four-year extension of the Master Agreements). The record in this proceeding demonstrates that Amendment 57 serves the public interest.

Amendment 57 immediately reduced the price of the per-transaction porting rate. As a result of the mid-term price reduction ("Mid-Term Reduced Rate"), the industry,

² See, *e.g.*, AT&T Comments at 4; NAPM Comments at 23-31.

³ See, *e.g.*, AT&T Comments 4-5, n.7; NAPM Comments at 23-31.

and ultimately consumers, will likely save \$200 million or more between now and the Original Expiration Date due to the lower cost of each porting transaction.⁴

NAPM was able to negotiate this immediate price reduction from NeuStar notwithstanding that NeuStar was under no obligation to consider lowering its rate until after the Master Agreement was set to expire on December 31, 2011. In addition, Amendment 57 provides that the Mid-Term Reduced Rate is subject to further reductions or increases between now and the Original Expiration Date in the event NeuStar or the NAPM take certain actions. Specifically, the Mid-Term Reduced Rate will be reduced an additional nine cents if NeuStar seeks to renegotiate a higher rate before the Original Expiration Date (“Contractor Modification Event”). Similarly, the Mid-Term Reduced Rate will be increased by nine cents if NAPM, before the Original Expiration Date (“Customer Modification Event”), seeks to renegotiate a lower rate, invites proposals from other vendors to provide NPAC/SMS administration, or initiates exploration of alternative technologies or platforms. However,

- The new or adjusted rate cannot exceed the rate that existed before Amendment 57 (the “Original Rate”),
- On the Original Expiration Date, the adjusted rate will revert to the Mid-Term Reduced Rate regardless of whether there have been any “Modification Events,”
- After the Original Expiration Date, the Mid-Term Reduced Rate will continue to apply despite any new “Modification Events,” and
- Amendment 57 does not provide for any recapture by NeuStar of any cost savings that have accrued to NAPM prior to a Modification Event.

Amendment 57 has already resulted in significant cost savings for the industry, and thus consumers, and these savings are highly likely to continue throughout the remaining term

⁴ See, e.g., NAPM Comments at 27 (explaining that the \$200 million estimated cost savings are based on conservative assumptions about porting and pooling volumes).

of the Master Agreements as modified by Amendment 57. At worst, the Mid-Term Reduced Rate will, at some point between now and the Original Expiration Date, revert back to the Original Rate until the Original Expiration Date, at which time it will be reduced again to the Mid-Term Reduced Rate. Accordingly, there is little question that Amendment 57 will result in significant cost savings for NAPM – and ultimately for telecommunications consumers – regardless of whether any “Modification Events” actually occur.

The price adjustment provisions of Amendment 57 are designed to discourage both parties from imposing additional costs on the other party before the Original Expiration Date.⁵ Contrary to the misleading claims of Telcordia,

- Only NAPM acting in its official capacity can trigger an upward charge adjustment. Individual companies and “users” or the NPAC/SMS are free to do and say whatever they please in any forum without triggering an upward charge adjustment,⁶
- Any competitor, including Telcordia, remains free to submit a proposal to act as the NPAC/SMS administrator, and NAPM remains free to consider the proposal without triggering an upward charge adjustment,⁷ and
- The technical, operational and performance criteria for the NPAC/SMS administration functions are all matters of public record, so potential competitors have all the information they need to submit a proposal to act as the NPAC/SMS administrator.⁸

Accordingly, cost savings are the only possible outcome of Amendment 57– there are no circumstances under which NAPM could trigger any payments or “penalties” that exceed the payments that would have been due under the Master Agreements as they existed

⁵ See, e.g., NeuStar Comments at 15.

⁶ See, e.g., NAPM Comments at 9, n.13; NeuStar Comments at 14, n.46.

⁷ See, e.g., AT&T Comments at 5; NAPM Comments at 26-29.

⁸ See, e.g., AT&T Comments at 6.

before Amendment 57. Moreover, NAPM is the only entity that could trigger an upward charge adjustment, and even then the circumstances under which an adjustment could be triggered are extremely narrow.⁹

Telcordia also has no basis for claiming that the amendment “effectively ensures that the current vendor will be immune from competition for at least five years.”¹⁰ Amendment 57 did not modify the termination or non-exclusivity provisions of the Master Agreements. As such, NAPM continues to remain free, at any time, to migrate to alternative vendors or solutions on a region-by-region basis. Moreover, Amendment 57 does not prohibit the NAPM LLC from accepting, or even soliciting, offers from competitors. Therefore, Amendment 57 has no preclusive impact on (1) competition, (2) the ability of Telcordia or any other potential vendor to submit a proposal to NAPM for consideration, or (3) the ability of NAPM to consider and accept a proposal from Telcordia or any other vendor.¹¹

Amendment 57 also extended the Master Agreement four years from 2011 to 2015. However, as noted above, the Mid-Term Reduced Rate will apply throughout the extended term regardless of whether any “Modification Events” occur during the original or extended term, and NAPM remains free during the extended term to migrate to other vendors should it so choose. In the meantime, Amendment 57 allows NAPM to receive excellent service from a proven vendor at reduced rates unless and until circumstances change.

⁹ See, e.g., NAPM Comments at 9, n.13.

¹⁰ Petition at i.

¹¹ See, e.g., NAPM Comments at 8, n.11.

In short, “[t]here is no substance to Telcordia’s claim that Amendment 57 is a ‘devil’s bargain’ that imposes on NAPM an economic ‘penalty’ if it solicited or entertained a proposal from a competitor of NeuStar to act as the NPAC/SMS administrator or to explore or provide alternative technologies or platforms for number portability.”¹² T-Mobile agrees with AT&T, NAPM, and NeuStar that Amendment 57 reflects an entirely rational and readily understandable exercise of NAPM’s business judgment that serves the public interest.¹³

II. TELCORDIA HAS FAILED TO ARTICULATE ANY BASIS FOR THE EXTRAORDINARY RELIEF IT NOW REQUESTS.

Telcordia requests the Commission to take the extraordinary steps of reforming Amendment 57 and implementing a formal procurement process for number portability administration services.¹⁴ However, as AT&T, NAPM, and NeuStar explain, Telcordia has failed to justify such action by the Commission.¹⁵

Importantly, Telcordia has not alleged that NAPM has acted improperly or deviated in any way from the applicable rules, procedures, and processes in adopting Amendment 57.¹⁶ Likewise, Telcordia has not asserted that the current NPAC/SMS services are inadequate, unreliable, or obsolete.¹⁷ Nor has Telcordia suggested that NeuStar has failed to comply with the rigorous and unique neutrality requirements

¹² AT&T Comments at 5 (citations omitted).

¹³ *See, e.g.*, AT&T Comments at 4; NAPM Comments at 25-31.

¹⁴ *See, e.g.*, Petition at i.

¹⁵ *See, e.g.*, AT&T Comments at 7; NAPM Comments at 6-8; NeuStar Comments at 16-26.

¹⁶ *See, e.g.*, NAPM Comments at 19-22.

¹⁷ *See, e.g., id.* at 13.

imposed by the Master Agreements.¹⁸ Rather, Telcordia complains that specific provisions in Amendment 57 are anticompetitive, and argues that the only solution to “the problem” is for the Commission to reform Amendment 57 and implement a formal procurement process for number portability administration services. T-Mobile agrees with other commenting parties that Telcordia is simply attempting to bypass established NAPM and NANC processes through regulatory means in order to get an undeserved second “bite at the apple.”¹⁹

A. Telcordia Has Not Demonstrated Any Valid Legal or Policy Basis for “Reforming” Amendment 57.

As noted above, Amendment 57 serves the public interest because it results in immediate and future cost savings to the industry without limiting the ability of NAPM to consider and accept proposals from alternate vendors to act as the NPAC/SMS administrator. Amendment 57, like all of the previous amendments to the Master Agreements, was the result of a commercial arms-length negotiation between the vendor and NAPM, which comprises many of the world’s largest and most sophisticated carriers, including AT&T, Embarq, Frontier, Qwest, Sprint, T-Mobile, and Verizon.²⁰

As NeuStar correctly notes, NAPM members are experienced negotiators who have every incentive to obtain the highest quality service at the lowest possible price for number portability administration.²¹ None of the NAPM members would gain anything from entering into an anticompetitive deal with NeuStar, or any other vendor, because none are affiliated in any way with any eligible vendors. As such, the relationship

¹⁸ See, e.g., NeuStar Comments at 8.

¹⁹ See, e.g., *id.* at ii.

²⁰ See, e.g., *id.* at 1-2.

²¹ See, e.g., *id.* at 2.

between the NAPM members and NeuStar is strictly as a customer to a vendor. Telcordia has not alleged, and could not in good faith claim, that NAPM, or any of its individual members, is biased or has a conflict of interest that requires FCC oversight. Rather, Telcordia focused on Amendment 57 itself and based its argument that FCC intervention is necessary upon a mischaracterization of the amendment.

T-Mobile agrees with AT&T, NAPM, and NeuStar that Telcordia has failed to demonstrate any legal or policy basis for Commission intervention to abrogate the LNP administration contracts. First, Telcordia's argument that having a single administrator violates Commission policy is incorrect, as the decisions Telcordia itself cites demonstrate.²² Second, Telcordia's arguments that Amendment 57 constitutes an "agreement in restraint of trade" in violation of Section 1 of the Sherman Act and a "bad act" of monopolization in violation of Section 2 of the Sherman Act have no merit for the reasons NeuStar sets forth in its comments.²³ Specifically, Section 1 of the Sherman Act is primarily aimed at "horizontal" agreements between direct competitors, not vertical agreements between a single buyer (*e.g.*, NAPM) and a single seller (*e.g.*, NeuStar) like the Master Agreements, and NeuStar is not a monopolist within the meaning of the antitrust laws or in any reasonable commercial sense. Third, as NeuStar emphasizes, Telcordia's argument that Amendment 57 violates the "just and reasonable" rate requirement under Section 201(b) of the Act is unfounded..²⁴ Section 201(b) does not

²² See, *e.g.*, Petition at 4, *citing Telephone Number Portability*, 11 FCC Rcd 8352, 8400 (1996) ("[I]t is in the public interest for the number portability databases to be administered by one or more neutral third parties."). See also, *e.g.*, NAPM Comments at 24-25 (summarizing history of NPAC/SMS administration and explaining Commission holdings that there could be more than one administrator, but that NAPM was not required to use more than one administrator).

²³ See NeuStar Comments at 17-20.

²⁴ See *id.* at 21-22.

govern the rates, terms and conditions of non-telecommunications services provided by non-common carriers to common carriers pursuant to numbering administration contracts; Section 201(b) is limited to common carrier services. However, even if the Master Agreements were subject to Section 201(b), the rates, terms, and conditions meet the just and reasonable standard for the reasons set forth above.

In any event, the Commission will not abrogate a commercially negotiated contract merely because a party allegedly has suffered a “private injury,” as NeuStar correctly observes.²⁵ Rather, the Commission will modify a private contract only upon a showing of “a *compelling* public interest” in the modification, which Telcordia has failed to demonstrate.²⁶ Indeed, the Petition consists of nothing more than a series of mischaracterizations regarding the nature of Amendment 57 and unsubstantiated claims that a better vendor could be secured if only the Commission would intervene.²⁷ Contrary to Telcordia’s baseless allegations, regulatory intervention would undermine the Commission’s LNP policies, which have successfully served the public interest since their implementation in 1997, and result in higher prices.²⁸

²⁵ *See id.* at 21-23.

²⁶ *See id.* at 23-25.

²⁷ *See, e.g.*, Petition at i.

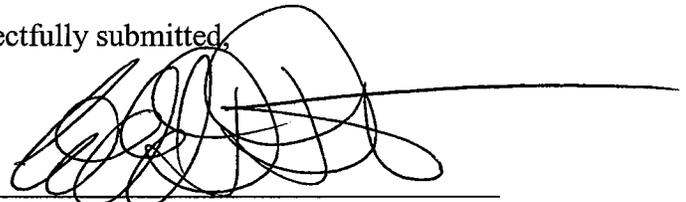
²⁸ *See, e.g.*, NeuStar Comments at 26-29. Telcordia’s statements regarding the importance of competition to number portability administration are disingenuous in light of the fact that administration of the Local Exchange Routing Guide (“LERG”) is not subject to competition or industry oversight. The LERG Routing Guide is the most comprehensive routing data output available, and the data it contains supports the current local exchange network within the NANP and identifies reported planned changes in the network. As such, T-Mobile respectfully submits that the Commission should consider whether imposition of the same framework of industry oversight that applies to number portability administration should be applied to administration of the LERG.

CONCLUSION

For the reasons stated above, Telcordia has not provided any valid justification for the extraordinary relief it seeks. The record in this proceeding demonstrates both that Amendment 57 serves the public interest and that the current framework for industry oversight continues to be the best means for protecting the public interest. Therefore, T-Mobile respectfully requests that the Commission promptly dismiss Telcordia's Petition.

Respectfully submitted,

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