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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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Federal Communications Commission  
Office of the Secretary

In the Matter of:

Petition of Telcordia Technologies, Inc.  
To Reform Amendment 57 and to Order a  
Competitive Bidding Process for Number  
Portability Administration

Petition of Telcordia Technologies, Inc. to  
Reform or Strike Amendment 70, to  
Institute a Competitive Bidding for Number  
Portability Administration, and to End the  
LLC's Interim Role in Number Portability  
Administration Contract Management

WCB Docket No. 07-149

**PETITION OF TELCORDIA TECHNOLOGIES, INC.  
TO REFORM OR STRIKE AMENDMENT 70, TO INSTITUTE COMPETITIVE BIDDING FOR  
NUMBER PORTABILITY ADMINISTRATION, AND TO END THE NAPM LLC'S INTERIM  
ROLE IN NUMBER PORTABILITY ADMINISTRATION CONTRACT MANAGEMENT**

John Nakahata  
Paul Margie  
Amy Richardson  
Linda Coffin  
**WILTSHIRE & GRANNIS LLP**  
1200 18<sup>th</sup> Street NW  
Washington, DC 20036  
(202) 730-1320

*Counsel for Telcordia Technologies, Inc.*

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## TABLE OF CONTENTS

<b>SUMMARY</b> .....	i
<b>INTRODUCTION</b> .....	1
<b>I. BACKGROUND</b> .....	8
A. The Commission’s Initial Preference for Competition in Number Portability Administration and NeuStar’s Accidental Monopoly.....	9
B. NAPM’s History of No-Bid Contract Extensions and Hostility to Competitive Bidding.....	11
C. NPAC and ENUM Services.....	14
D. Amendment 70.....	18
1. Amendment 70’s Exclusionary Effect.....	19
2. Amendment 70’s Anticompetitive Timing With Respect to Other Unsolicited Proposals.....	22
3. Amendment 70 and ENUM.....	23
4. Amendment 70 and FCC Oversight.....	25
<b>II. ARGUMENT</b> .....	26
A. Amendment 70 Must Be Stricken or Reformed Because NAPM Has Unlawfully Foreclosed Competition in NPAC Services Until 2016 and Exceeded Its Authority by Doing so Without FCC Approval.....	26
1. NAPM Lacks Authority to Extend Contracts or to Determine NPAC Industry Structure.....	26
2. Amendment 70 Unlawfully, Anticompetitively and Unreasonably Forecloses NPAC Competition Until, at Earliest, 2016.....	32
3. NAPM’s Failure to Obtain Competitive Bids Prior to Entering Into Amendment 70 Violates the Competition in Contracting Act.....	38
B. Amendment 70 Must Be Stricken or Reformed Because NAPM Has Abused Its Authority by Permitting NeuStar to	

	Add URIs to the NPAC Database and to Cross-Subsidize Its ENUM Provisioning Services.....	40
C.	Amendment 70 Must Be Stricken or Reformed Because Its Inseverability Clause Is Wholly Inconsistent with NANC and FCC Oversight. ....	43
D.	The Commission Has Full Legal Authority to Strike or Reform the NPAC Contracts Including Amendments 70 and 57.....	45
E.	The Commission Should Preserve the Status Quo Pending Completion of this Proceeding, Direct the NANC to Complete the Development of Multivendor Peering Standards Forthwith, Conduct a Competitive Bid and then Terminate the NeuStar Contract Upon Implementation of those Competitive Awards.....	50
	<b>CONCLUSION .....</b>	<b>53</b>

## SUMMARY

NeuStar and the North American Portability Management, LLC (“NAPM”) have done it again. They have entered into a multibillion dollar contract modification – Amendment 70 – that locks in NeuStar’s monopoly revenues and locks out competition and any opportunity for the industry and consumers to see Number Portability Administration Center (“NPAC”) database costs drop through competition – this time through 2015. President Obama recently reiterated that it is “the policy of the federal government” that all federal agencies, including the Federal Communications Commission, should engage in competitive bidding to ensure the best value for taxpayers, and avoid “excessive reliance . . . on sole-source contracts.” If allowed to stand, however, NeuStar and NAPM’s latest action will mean that the NPAC contracts – which were last bid in 1997 – will not be rebid for another six years at a minimum. Nearly twenty years between competitive bids for a high technology service is far too long.

Not only does Amendment 70 extend NeuStar’s monopoly position from 2012 until 2016, it allows NeuStar to leverage its newly-cemented NPAC monopoly into the competitive ENUM market, and sets up mechanisms to cross-subsidize that entry with the mandatory fees paid by all telecommunications carriers. If NeuStar gains dominance in ENUM, it would have a clear path to recoup all cross-subsidies. There is no reason for the Commission to be a party to this anticompetitive behavior.

In contrast, had NAPM instead put the NPAC contract out for competitive bids, it could have allowed the industry to reap the benefits of competition. The Commission could have solicited proposals that offered elements it thought to be beneficial, such as a capped fee, without having to agree to the revenue protection and other anticompetitive

terms that NeuStar negotiated with NAPM. In addition, NAPM could have had the opportunity to ascertain the value of the opportunity to use an NPAC database to create an ENUM database. Because NAPM made no attempt to solicit competitive bids, the industry on behalf of which NAPM is supposed to act will never know exactly how much it will be overpaying NeuStar over the next six years. What we do know is that NAPM had received unsolicited offers that were 22% cheaper than Amendment 70 through 2015.

To make matters even worse, NeuStar and NAPM have attempted to shield their unlawful and anticompetitive contract from meaningful FCC oversight by including an inseverability clause that would vaporize all of Amendment 70 and immediately give NeuStar a windfall by upwardly repricing all porting transactions since January 1, 2009 if the Commission declares any part of Amendment 70 to be unlawful or void. The Commission cannot permit its oversight and control to be blunted in this way.

To protect consumers, carriers that are not members of NAPM but are required by FCC rule to pay NeuStar's charges, and the overall public interest, Telcordia respectfully requests that the Commission move promptly to take the following actions:

- First, to prevent further prejudicial changes in the status quo during consideration of this petition, the Wireline Competition Bureau should direct NAPM to refrain from taking any actions to add URI fields to the NPAC, pending further review by the Commission. This is the subject of a separate letter filed in this docket.
- Second, on an interim basis pending completion of this proceeding, the Bureau should direct NAPM not to execute any additional contract amendments without prior Commission approval.
- Third, the Commission should immediately begin a competitive bidding process for a multivendor (i.e. inter-NPAC peering) NPAC administration system, upon completion of requirements development. The LNPA Working Group is currently working to develop the requirements, flows, and interface specifications for multivendor, inter-NPAC peering. The FCC should give the LNPA Working Group a deadline for providing recommended requirements, flows, and interface specifications to NANC, and NANC a deadline for

forwarding its recommendations to the Commission. The Commission can then publish a request for proposals for at least two vendors of NPAC services. Once bids have been received and awards made, the existing NPAC contracts should be terminated by the Commission. The inseverability clauses in Amendments 57 and 70 (and any similar clauses), which would otherwise retroactively reprice porting transactions, should be declared void as a matter of public policy. This will ensure that NeuStar does not reap a windfall from its anticompetitive activities.

- Fourth, while the Commission is conducting and implementing a new competitive procurement, the Commission should direct that NeuStar's interim compensation be calculated in accordance with Amendment 70, without the provisions related to discounts for implementing URI fields. As NeuStar agreed to these levels of compensation for these years, it can hardly claim that such compensation is non-remunerative. Together with voiding the inseverability clauses, this will also ensure that NeuStar cannot raise its rates during the transition to a competitively bid NPAC.
- Fifth, the Commission should end NAPM's interim designation as the manager of contracts governing NPAC administration and resume direct authority over NPAC procurement. NAPM has shown at least three times that it is willing to shore up NeuStar's monopoly in order to garner short-term cost savings. It has failed to operate in the public interest and has acted to defy or frustrate accountability and oversight.

Unless it implements these steps the Commission will, in effect, countenance an 18-year long monopoly that has garnered tremendous profits for NeuStar at the expense of the American consumer, and open the door for NeuStar to monopolize the ENUM services market.

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**INTRODUCTION**

When Telcordia filed its first Petition<sup>1</sup> in 2007 seeking to restore competition to number portability administration, it warned that unless the Commission took action, the North American Portability Management LLC ("NAPM" or "the LLC")<sup>2</sup> and NeuStar,

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<sup>1</sup> 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) ("Telcordia Petition").

<sup>2</sup> NAPM LLC is the successor in interest to the seven original regional LLCs (the Northeast Carrier Acquisition Company, LLC; LNP, LLC (Midwest); Southwest Region Portability Company, LLC; Western Regional Telephone Number Portability, LLC; Southeast Number Portability Administration Company, LLC; Mid-Atlantic Carrier Acquisition Company, LLC; and West Coast Portability Services, LLC). Despite the merger of the seven separate LLCs into NAPM LLC, the seven separate Master Agreements have been maintained as distinct and separate contractual relationships. Any differences in the seven Master Agreements do not affect the issues raised by this

Inc. (“NeuStar”) would again take the path of least resistance and enter into another secret no-bid contract modification to the detriment of competition and the public interest. What Telcordia foretold has now come true: in their latest no-bid, secret deal – named Amendment 70<sup>3</sup> – NAPM and NeuStar, by a single stroke foreclosed any competition in number portability administration services until 2016 – an additional four years beyond the previous unlawful contract amendment (Amendment 57) that foreclosed competition until 2012. And Amendment 70 goes even further by allowing NeuStar to leverage its newly-reinforced and extended NPAC monopoly over the Number Portability Administration Center (NPAC) database to cross-subsidize its entry into the ENUM services market, with the prospect that NeuStar will be able to use those cross-subsidies to dominate those services as well. Like Cassandra, Telcordia draws no comfort from having been proved correct thus far.

The real loser here is the American consumer. Last year, following up on NAPM’s pledges that competition could come to NPAC services through unsolicited proposals, notwithstanding Amendment 57’s exclusionary contract amendments, Telcordia made two unsolicited proposals to NAPM – one of which would have saved approximately \$550 million through 2015, when compared to Amendment 70. Ironically, in late November 2008, NAPM turned down that proposal – which would have returned competition to number portability by regions by 2010 – on the grounds that a regional proposal did not provide for sufficient vendor choice, as there would still only be one

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Supplemental Petition, which for the sake of simplicity will refer to a single Master Agreement.

<sup>3</sup> Amendment 70 is attached as Exhibit 1, *also available at* <http://www.sec.gov/Archives/edgar/data/1265888/000095013309000136/w72483exv99w1.htm>.

NPAC for each region. Instead, just weeks later, NAPM locked itself in to paying NeuStar \$2.8 billion from signing through the end of 2015 – a 22% premium over Telcordia’s proposal – with no possibility of additional savings through competition and no possibility of vendor choice.<sup>4</sup> These fees are not just a private charge paid by NAPM’s seven members: to the contrary, they are mandatory fees that the Commission requires all telecommunications carriers – and indirectly, all consumers – to pay. If the Commission actually conducts a competitive bid, it is likely that it could achieve far greater savings through 2015 than just the elimination of the NeuStar premium, with the result that these FCC-mandated fees for these NAPM-selected costs would fall. When NAPM executes amendments without any competition and without FCC approval to protect the public interest, there is no check to prevent NAPM’s members from compromising the longer term public interest, including the interests of all consumers and carriers, to meet whatever NAPM’s members perceive to be their narrower short-term interests.

It is time for the Commission to put a stop to the non-transparent insider dealing that has characterized number portability administration contracts. As President Obama recently instructed the head of every Executive Department and Agency, including the Federal Communications Commission, “The Federal Government has an overriding obligation to American taxpayers. It should perform its functions efficiently and

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<sup>4</sup> Telcordia estimates that NeuStar would be paid \$2.8 billion between signing and the expiration of the contract term on December 31, 2015, assuming an estimated annual transaction growth of 16%. The estimate did not include any discounts related to URIs. This estimate includes the National Annual Fixed Porting Adjustment based on volumes for the assumed growth rate.

effectively while ensuring that its actions result in the best value for the taxpayers.”<sup>5</sup> The President warned, “*Excessive reliance by executive agencies on sole-source contracts . . . creates a risk that taxpayer funds will be spent on contracts that are wasteful, inefficient, subject to misuse, or otherwise not well designed to serve the needs of the Federal Government or the interests of the American taxpayer.*”<sup>6</sup> As the President further directed, “[i]t is the policy of the Federal Government that *executive agencies shall not engage in non competitive contracts except in those circumstances where their use can be fully justified and where appropriate safeguards have been put in place to protect the taxpayer.*”<sup>7</sup> Furthermore, the President reminded executive agencies, including the FCC, that they must not outsource inherently governmental activities.<sup>8</sup>

Competitive bidding is not just the President’s directive, it is also the law of the land. The Competition in Contracting Act of 1984 mandates: “an executive agency in conducting a procurement for property or services shall obtain full and open competition through the use of competitive procedures.”<sup>9</sup> But there has been no competitive bidding in number portability administration since the initial contracts were first let in 1997. Instead, NAPM has now four times engaged in no-bid contract extensions, far exceeding the scope of the 1997 competitive bids. Unless the Commission acts, Amendment 70 will ensure that competition cannot return to number portability until – at earliest – 2016,

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<sup>5</sup> Memorandum for the Heads of Executive Departments and Agencies, Subject: Government Contracting (March 4, 2009), available at [www.whitehouse.gov/the\\_press\\_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-Subject-Government/](http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-Subject-Government/) (“President’s Government Contracting Directive”).

<sup>6</sup> *Id.* (emphasis added).

<sup>7</sup> *Id.* (emphasis added).

<sup>8</sup> *Id.* See also OMB Circular No. A-76 (May 29, 2003), available at [http://www.whitehouse.gov/omb/circulars\\_a076\\_a76\\_incl\\_tech\\_correction/](http://www.whitehouse.gov/omb/circulars_a076_a76_incl_tech_correction/).

<sup>9</sup> 41 U.S.C. § 253(a)(1).

nearly twenty years after the initial competitive bids. Ten years – let alone twenty – is far too long for the Commission to allow the NPAC contract to run without testing its reasonableness through competitive bidding. Certainly, the fact that NAPM has felt the need to engage in four significant renegotiations – each because porting fees threatened to skyrocket – strongly suggests that new competitive bids are needed to ensure that the NPAC contracts are not “wasteful, inefficient, subject to misuse, or otherwise not well designed to serve the needs of the Federal Government or the interests of the American taxpayer.”<sup>10</sup>

In executing these no-bid contract revisions, NAPM far exceeded its authority, which is only to “manage and oversee” the NPAC contracts on an interim basis.<sup>11</sup> NAPM has no authority to determine when the NPAC contract will next be open for competitive bid, or whether competitive bidding should be used, as these are inherently governmental functions that must be reserved for the FCC to decide. Yet, with Amendment 70, NAPM, not the FCC, made these decisions. Moreover, NAPM had no authority to permit NeuStar to expand the NPAC into an ENUM provisioning database; FCC rules specifically limit the NPAC database to “information necessary to route telephone calls.”<sup>12</sup> However, in executing Amendment 70, NAPM arrogated to itself this decision as well – and it has done so by sacrificing competition and long-term public interest to reap short-term cost savings.

To make matters worse, NAPM and NeuStar have handed the Commission an oversight booby-trap: all of Amendment 70 will self-destruct through its inseparability

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<sup>10</sup> See n. 6, *supra*.

<sup>11</sup> 47 C.F.R. § 52.26(b)(2).

<sup>12</sup> 47 C.F.R. § 52.25(f).

clause if the Commission makes *any* change – even if the Commission concludes that NAPM acted anticompetitively, unjustly, unreasonably or wholly outside its authority. This *ultra vires* activity should not be countenanced. The Commission must immediately reestablish the supremacy of its oversight of NPAC administration, and its statutory role as the policymaker. It can only do so by striking down the Amendment 70's inseverability clause.

Both the Communications Act and the NAPM-NeuStar contract give the Commission the right to reclaim its statutory role as the policymaker. Section 251(e) gives the Commission plenary power over numbering, and Section 201 proscribes all unjust and unreasonable practices. Article 25 of the Master Agreement between NAPM and NeuStar acknowledges the Commission's authority over the agreement, and that the FCC may direct changes or modifications to the agreement. To protect consumers, non-NAPM carriers that are required by FCC rule to pay NeuStar's charges, and the overall public interest, Telcordia respectfully requests that the Commission move promptly to take the following actions:

- First, to prevent further prejudicial changes in the status quo during consideration of this petition, direct NAPM to refrain from taking any actions to add URI fields to the NPAC, pending further review by the Commission. As addressed in a separate letter filed previously in this docket, implementing a standstill will not violate or modify any current provisions of any contract and it will leave the negotiated discount prices in place. A standstill will allow the Commission to prevent further anticompetitive harm without

placing the Commission in the position in which the only way to halt the addition of URIs is to modify or negate provisions of the contract.

- Second, on an interim basis pending completion of this proceeding, the Bureau should direct NAPM not to execute any additional contract amendments without prior Commission approval.
- Third, the Commission should immediately begin a competitive bidding process for a multivendor (i.e. inter-NPAC peering) NPAC administration system, upon completion of requirements development. The LNPA Working Group is currently working to develop the requirements, flows and interface specifications for multivendor, inter-NPAC peering. The FCC should give the LNPA Working Group a deadline for providing recommended requirements, flows and interface specifications to NANC, and NANC, for forwarding its recommendations to the Commission. The Commission can then publish a request for proposals for at least two vendors for NPAC services. Once bids have been received and awards made, the existing NPAC contracts should be terminated by the Commission. The inseverability clauses in Amendments 57 and 70 (and any similar clauses), which would otherwise retroactively reprice porting transactions, should be declared void as a matter of public policy. This will ensure that NeuStar does not reap a windfall from its anticompetitive activities.
- Fourth, while the Commission is conducting and implementing a new competitive procurement, the Commission should direct that NeuStar's interim compensation will be calculated in accordance with Amendment 70,

without the provisions related to discounts for implementing URI fields. As NeuStar agreed to these levels of compensation for these years, it can hardly claim that such compensation is non-remunerative. Together with voiding the inseverability clauses, this will also ensure that NeuStar cannot raise its rates during the transition to a competitively bid NPAC.

- Fifth, the Commission should end NAPM's interim designation as the manager of contracts governing NPAC administration and resume direct authority over NPAC procurement. NAPM has shown at least three times that it is willing to shore up NeuStar's monopoly in order to garner short-term cost savings. It has failed to operate in the public interest and has acted to defy or frustrate accountability and oversight.

Unless it implements these steps the Commission will, in effect, countenance an 18-year long monopoly that has garnered tremendous profits for NeuStar at the expense of the American consumer.

## **I. BACKGROUND**

To implement the pro-competition provisions of the Telecommunications Act of 1996, the FCC required carriers to implement long term database number portability.<sup>13</sup> The Commission requires all carriers to pay the shared costs of long-term number portability, including provision of the NPAC.<sup>14</sup> Carriers cannot opt out of these charges, levied pursuant to FCC rule regardless of whether a carrier actually uses number porting. And for carriers not subject to FCC rate regulation, these charges are routinely passed on to consumers.

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<sup>13</sup> 47 C.F.R. § 52.23(a).

<sup>14</sup> 47 C.F.R. § 52.32.

**A. The Commission's Initial Preference for Competition in Number Portability Administration and NeuStar's Accidental Monopoly.**

From the start of its efforts to implement number portability, the Commission embraced the concept of competition between porting administration contractors. The Commission, in the *Telephone Number Portability First Report and Order*,<sup>15</sup> concluded, "it is in the public interest for the number portability databases to be administered by one or more neutral third parties." The Commission directed its advisory committee, the North American Numbering Council ("NANC") "to select as a local number portability administrator(s) (LNPA(s)) one or more independent, non-governmental entities that are not aligned with any particular telecommunications industry."<sup>16</sup>

In response to the Commission's request for a recommendation as to "whether one or multiple administrators should be selected,"<sup>17</sup> the NANC identified two advantages that would result from the selection of multiple database administrators.<sup>18</sup> First, multiple database administrators would create competition in both the competitive bidding and selection processes. "[H]aving multiple database administrators . . . should enable carriers to obtain *more favorable terms and conditions than if only one database administrator had been selected.*"<sup>19</sup> Second, multiple administrators would provide a "back-up" system if one administrator could not or would not perform its obligations under its Master Agreement or declined to renew its Agreement. The other administrators, because of their experience and expertise, could provide these services

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<sup>15</sup> *Telephone Number Portability, First Report and Order and Further Notice of Proposed Rule Making*, 11 FCC Rcd 8352, 8400 ¶92 (1996) ("*First Report and Order*").

<sup>16</sup> *Id.* at 8401 ¶93.

<sup>17</sup> *Id.* at 8402 ¶95.

<sup>18</sup> See *Telephone Number Portability, Second Report and Order*, 12 FCC Rcd 12281, 12305 ¶36 (1997) ("*Second Report and Order*").

<sup>19</sup> *Id.* (emphasis added).

quickly and with minimal disruption to the industry.<sup>20</sup> As a result, the NANC said, “*the selection of two database administrators is consistent with the Commission’s directive that the NANC recommend the most cost-effective number portability.*”<sup>21</sup>

By the time the NANC submitted its recommendations to the Commission, two database administrators had been selected by the regional LLCs under the auspices of the NANC: Lockheed Martin IMS and Perot Systems.<sup>22</sup> In approving the selection of two administrators, the Commission observed, “*there are clear advantages to having at least two experienced number portability database administrators that can compete with and substitute for each other, thereby promoting cost-effectiveness and reliability in the provision of Number Portability Administration Center services.*”<sup>23</sup> That is all the more true today, when more telephone calls than ever are routed based on NPAC data, and the need for vendor diversity and such a “back-up” system is greater than ever.

NeuStar became the sole number portability database administrator by happenstance, not by deliberate choice by the Commission or the NANC. By 1998, it became apparent that Perot Systems would be unable to begin operations on time.<sup>24</sup> At that time, those regional LLCs that had not initially selected NeuStar terminated their contracts with Perot Systems and signed contracts with NeuStar. By default, NeuStar became the sole number portability administrator in the United States.

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<sup>20</sup> *See id.*

<sup>21</sup> *Id.* (emphasis added).

<sup>22</sup> *Id.* at 12306-7, ¶¶38-39.

<sup>23</sup> *Id.* (emphasis added).

<sup>24</sup> *Telephone Number Portability, Second Memorandum Opinion and Order on Reconsideration, 13 FCC Rcd 21204, 21208-9, ¶¶6-10 (1998)*(“*Second Memorandum Opinion and Order on Reconsideration*”).

The Commission designated the regional LLCs, which later joined together in NAPM, LLC, to “manage and oversee”<sup>25</sup> the local number portability database administrators, but only as an *interim measure* pending further rulemaking proceedings.<sup>26</sup> In making that interim designation, the Commission also required that NAPM would be overseen by the NANC, subject to the further oversight of the Commission.<sup>27</sup> However, that rulemaking never commenced, so NAPM continues to “manage and oversee” NeuStar on an interim basis.

In addition, when the FCC was establishing the framework for its number portability database, it set clear limits on the information that could be placed in the NPAC database: “The information contained in the regional databases shall be limited to the information necessary to route telephone calls to the appropriate telecommunications carriers.”<sup>28</sup> The Commission assigned NANC the responsibility for determining what specific information is “necessary to route telephone calls.”<sup>29</sup> However, the FCC did not grant either the NANC or NAPM the authority to add to the NPAC information that is not necessary to route telephone calls.

**B. NAPM’s History of No-Bid Contract Extensions and Hostility to Competitive Bidding.**

Even before execution of Amendment 70, NAPM engaged in no-bid contract extensions or major modifications *three times* since NeuStar became the sole NPAC vendor nationwide, and exhibited an open disdain for open competitive bidding. In

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<sup>25</sup> 47 C.F.R. § 52.26(b)(2).

<sup>26</sup> *Second Report and Order*, 12 FCC Rcd at 12305 ¶36.

<sup>27</sup> The Commission delegated general oversight of number portability to the NANC. *See* 47 C.F.R. §§ 52.12 et seq.

<sup>28</sup> 47 C.F.R. § 52.25(f).

<sup>29</sup> *See First Report and Order*, 11 FCC Rcd at 8403-4 ¶99 (“The NANC should determine the specific information necessary to provide number portability.”).

December 2000, NAPM granted NeuStar its first no-bid contract extension, extending NeuStar's initial term from 2002 to 2006, with an option for 2007. Had that been the only no-bid contract extension, NAPM (at the FCC's direction) or the FCC could have conducted and implemented a competitive bid by 2006, reestablished at least its initial system of two vendors competing for regional contracts, and perhaps even moved to a multivendor NPAC market.

But that did not happen. Competitive bidding was apparently not even on NAPM's radar screen. In October 2003, NAPM again extended NeuStar's contract – this time through 2011 – in return for a claimed \$77 million in savings over the original term of the contract. When some NANC members objected to giving NeuStar this long extension and requested an accounting of the claimed savings, NAPM refused to give a public accounting, citing “confidentiality” restrictions in its contract with NeuStar.

A year later, in September 2004, the NANC received complaints that NAPM was being unresponsive and was failing to provide critical information to potential alternative NPAC vendors, again citing confidentiality restrictions in its contract with NeuStar. At that time, the Chair of NANC stated that NANC felt NAPM LLC should be encouraging and facilitating competition and innovative ideas.<sup>30</sup>

In response to that public scolding, at a NANC meeting in May 2005, NAPM announced that it had developed a process for receiving unsolicited proposals from vendors. But NAPM simultaneously declared that it had no interest in soliciting competitive bids, and stated it would not do so unless it believed it had a need to void its

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<sup>30</sup> North American Numbering Council Meeting Minutes (Sept. 14, 2004) at 18, *available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-256288A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-256288A1.pdf).

current vendor contract.<sup>31</sup> Nonetheless, NAPM represented that when a new contract period was about to begin, it would issue an RFP.<sup>32</sup>

Despite this representation, little more than a year later, in September 2006, after six months of *secret, closed-door negotiations*, NAPM and NeuStar entered into yet a *third* no-bid contract extension – Amendment 57. Once again claiming that it needed to secure immediate cost reductions, NAPM extended the term of the Master Agreement – which already ran to 2011 – by four more years, to 2015. But Amendment 57 went even further to lock out even unsolicited competitive bids prior to 2012: as described in detail in Telcordia’s previous petition, NAPM agreed to pay NeuStar an approximately \$30 million (or more) recurring annual penalty if NAPM were to even publicly contemplate issuing a request for proposals for the provision of NPAC/SMS-type services in the U.S., or accept any proposal to offer these services, prior to 2012.<sup>33</sup> To leave the way open for further secret deals, Amendment 57 also mandated that any future negotiations be kept secret. And to try to ensure that the FCC would not engage in oversight, NAPM and NeuStar included an inseverability clause, purporting to render the entire Amendment 57 null and void in the event that any provision was held invalid or unenforceable.<sup>34</sup>

It was after this contract amendment that, in June 2007, Telcordia petitioned the Commission seeking reformation of Amendment 57’s anticompetitive “poison pill”

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<sup>31</sup> NANC Minutes (May 17, 2005) at 8, *available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-260511A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-260511A1.pdf).

<sup>32</sup> *Id.*

<sup>33</sup> *See* Amendment to Contractor Services Agreement for Number Portability Administration Center/Service Management System, Extension and Modification, Amendment No. 57, by and between NeuStar, Inc., and NAPM (effective Sept. 21, 2006) at Section 8.3 (“Amendment 57”) (attached as Exhibit A to Telcordia Petition).

<sup>34</sup> Amendment 57 at Section 13.2.

provisions, and a direction to NAPM to openly solicit competitive services.<sup>35</sup> Telcordia projected that the per transaction prices in Amendment 57 were at least 20% too high as compared to what could have been obtained through competitive bidding – meaning that the industry and consumers were being overcharged by at least \$60-70 million per year. Telcordia warned that the practical effect of Amendment 57 and its penalty provisions was to eliminate any real possibility of competition for number porting services until at least 2012 and – because of the provision mandating that future negotiations be kept secret – probably well beyond 2012.<sup>36</sup> Now, 18 months later, with Telcordia’s Petition still awaiting Commission action, NAPM and NeuStar have *again* secretly negotiated and executed Amendment 70 without competitive bidding to obtain short term reductions in number portability administration costs.

**C. NPAC and ENUM Services.**

During this same period, NeuStar, frequently with NAPM’s agreement, undertook a series of actions to try to expand the NPAC into an ENUM provisioning database. This campaign sought to allow NeuStar to leverage its monopoly NPAC database into the competitive ENUM market, while at the same time prohibiting NAPM from embracing ENUM or any other alternative to NeuStar’s NPAC services.

ENUM is an international standard that unifies traditional telephony and next-generation IP networks, and provides a critical framework for mapping and processing

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<sup>35</sup> Telcordia Petition; Reply of Telcordia Technologies, WC Docket No. 07-149 (Sept. 21, 2007).

<sup>36</sup> *Id.* at 27.

diverse network addresses.<sup>37</sup> It transforms the telephone number—the most basic communications address—into a universal identifier that can be used across many different devices and applications (voice, fax, mobile, email, text messaging, location-based services and the Internet). It does this by associating a telephone number with IP gateways for customer services and devices. There are both public ENUM and service-provider, or private, ENUM.

The most common use of service-provider ENUM is for IP peering – enabling the IP-IP exchange of traffic between service providers. While public ENUM is still nascent, service-provider ENUM is a growing, competitive market. When CableLabs in 2005 issued a request for information regarding provision of ENUM clearinghouses for VoIP peering, thirty companies were reported to have responded. More recently, multiple bidders responded to the ENUM LLC’s RFP to provide an ENUM clearinghouse for carriers choosing to participate.<sup>38</sup> Unlike NPAC, service provider ENUM already operates in multivendor form.

In January 2005, with NAPM’s approval, NeuStar proposed to add four Uniform Resource Identifier (URI) fields to the NPAC.<sup>39</sup> When NANC’s Future of Numbering

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<sup>37</sup> Internet Engineering Task Force (IETF), *[Enum] RFC 3761 on The E.164 to Uniform Resource Identifiers (URI) Dynamic Delegation Discovery System (DDDS) Application (ENUM)*, available at <http://www.ietf.org/mail-archive/web/enum/current/msg02981.html>.

<sup>38</sup> Telcordia was selected by ENUM LLC to be the Country Code 1 ENUM clearinghouse. See Press Release, Telcordia Technologies, Inc., *Country Code 1 ENUM LLC Enables Next Generation Services with Launch of Extensible ENUM Registry Service* (Feb. 17, 2009), available at [http://www.telcordia.com/news\\_events/press\\_releases/2009/02172009.html](http://www.telcordia.com/news_events/press_releases/2009/02172009.html).

<sup>39</sup> This was NANC Change Order 400, initiated at the NANC Local Number Portability Administration Working Group (“LNPA Working Group”). The proposed URI fields were for voice, multimedia messaging services, push-to-talk over cellular and presence. See Report and Recommendation on NANC Change Orders 399 & 400, Future of Numbering Working Group (revised June 10, 2005) at 4, available at [www.nanc-](http://www.nanc-)

Working Group and LNPA Working Groups met to consider the request,<sup>40</sup> the participants reached a consensus that the proposed URI fields were not necessary for the routing of telephone calls on the Public Switched Telephone Network but were for VoIP-to-VoIP calls, picture mail and instant messaging.<sup>41</sup> Both the Future of Numbering Working Group, and ultimately NANC itself, were unable to reach a consensus to add the URIs, at least in part because some NANC members believed that 47 C.F.R. § 52.25(f) precluded including the URIs in the NPAC because they were not necessary for the routing of telephone calls.<sup>42</sup> In June 2005, NANC forwarded NeuStar's proposal to the FCC without recommendation or approval.<sup>43</sup> The FCC did not approve that proposal, but last year returned it to the industry for reconsideration.<sup>44</sup> No further action has been taken by NANC.

Undeterred, in September 2006 – as a part of Amendment 57 and without any approval or prior consent from the FCC or NANC – NAPM and NeuStar agreed to apply the billing structure under that per transaction fee framework to possible future transactions concerning certain IP-related data elements that were yet to be included in

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[chair.org/docs/nowg/Jun05\\_FoN\\_NANC\\_Change\\_Order\\_Report.doc](http://www.nanc-chair.org/docs/nowg/Jun05_FoN_NANC_Change_Order_Report.doc) (“Future of Numbering Report”). When proposed, the stated purpose of these new fields was to coordinate and synchronize the updates of the SS7-based number portability databases with that of the IP-based look up databases. *See id.*

<sup>40</sup> NANC, at its March 2005 meeting, had referred the issue to both its Local Number Portability (LNPA) Working Group and its Future of Numbering Working Group for an evaluation and recommendation. NANC Minutes (March 15, 2005) at 18-19, *available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-260510A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-260510A1.pdf).

<sup>41</sup> *See* Future of Numbering Report at 25-26.

<sup>42</sup> *See* Future of Numbering Report at 32.

<sup>43</sup> *See* NANC Minutes (June 28, 2005) at 2, *available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-260515A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-260515A1.pdf).

<sup>44</sup> *See* Letter from Dana Shaffer, Chief, Wireline Competition Bureau, to Tom Koutsky, Chair, NANC (Feb. 4, 2008), *available at* [http://www.nanc-chair.org/docs/mtg\\_docs/Change\\_Order\\_400.pdf](http://www.nanc-chair.org/docs/mtg_docs/Change_Order_400.pdf).

the NPAC, such as a network address to a service provider's gateway for voice service, MMS, push-to-talk cellular, or IMS service. Although the amendment expressly did not approve incorporation of these IP-related elements into the NPAC, NAPM was forbidden from ever rejecting the billable nature of the addition of these data elements, even though they had not yet been found necessary for the routing of telephone calls.<sup>45</sup>

Amendment 57 also attempted to eliminate ENUM as a potential competitive threat to NeuStar's NPAC monopoly. Although ENUM does not replace NPAC with respect to PSTN calls, NPAC serves only a minor function in an ENUM environment – identifying the service provider associated with a ported or pooled telephone number. With that information, an ENUM clearinghouse can route IP traffic as needed. In an all IP-IP universe, NPAC could become obsolete. To respond to this threat, NeuStar and NAPM agreed in Amendment 57 that the advocacy, endorsement, adoption or approval of ENUM by NAPM would trigger the over \$30 million annual “poison pill” penalty.<sup>46</sup> Thus, while NeuStar was seeking to convert the NPAC into its own ENUM provisioning database, it simultaneously agreed with NAPM that NAPM would not pursue ENUM as an alternative to NPAC.

Then, on September 23, 2008, NeuStar and NAPM executed yet another amendment to the NPAC Master Contract. This amendment purported to define

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<sup>45</sup> Section 8.5 provided:

[T]he Customer is not entitled to reject a Statement of Work under Article 13 or an amendment under Article 30 that adds in the NPAC/SMS any of the data elements set forth in and subject to this Section 8.5 on the basis of the billable nature of the data elements. Additionally, nothing in this Section 8.5 shall be interpreted as approval, as of the Amendment Effective Date [sic] under this Amendment of the data elements set forth above in Paragraph (ii).

<sup>46</sup> Specifically Section 8.3(b)(A)(iii) prohibited NAPM from “advocating, endorsing, adopting, or approving the development, implementation or use of an alternate TN-level routing administration capability” before 2012.

telephone “calls” – the key term in 47 C.F.R. § 52.25(f) governing whether data may be added to the NPAC – broadly to include not just Public Switched Telephone Network voice calls, but also:

the transmission of information (video, pictures, audio [voice, music], messages, text, data, or combinations of these) by use of a telephone number (NPA-NXX-XXXX), which may include the transmission of signaling messages or the transmission of provisioning data associated with information sessions, subscribers, and network equipment and devices (e.g., discovery, parameter negotiation, establishment, connection, maintenance, disconnection, presence, location, authentication, billing, usage).<sup>47</sup>

Once again, NAPM and NeuStar acted without prior approval by either the NANC or the FCC.

**D. Amendment 70.**

On January 28, 2009, NAPM and NeuStar signed Amendment 70, their fourth no-bid deal, again negotiated behind closed doors. This contract amendment effected a substantial change to NeuStar’s NPAC contract through the end of 2015 – effectively extending NeuStar’s period as exclusive NPAC vendor by four more years. Instead of paying NeuStar a fee per porting transaction, NAPM and NeuStar converted the contract into a quasi-fixed price contract, with a base fixed fee that escalates each year. In 2009, it appears that NeuStar will have a base fee of approximately \$300 million,<sup>48</sup> lower than the \$321 million that NeuStar reported it received under the NPAC contract in 2008.<sup>49</sup>

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<sup>47</sup> Amendment 68 at 14, *available at* <http://idea.sec.gov/Archives/edgar/data/1265888/000095013308003729/w71456exv10w1w2.htm>.

<sup>48</sup> This combines the \$340 million base fee with a first year discount of \$40 million.

<sup>49</sup> NeuStar Investor Conference Call 1/28/2009 at 4 (Attached as Exhibit 2).

### **1. Amendment 70's Exclusionary Effect.**

While the migration of a per transaction contract into a quasi-fixed fee contract is not itself objectionable, the anticompetitive impact of Amendment 70 becomes apparent when transaction numbers are inserted into the contract's pricing formulas. Under the prior per transaction contract, when a competitor entered the market, NeuStar would lose revenues directly in proportion to its loss of market share – offset only by the amount of the unlawful penalties it would have assessed under Amendment 57. Moreover, it lost those revenues immediately as business shifted, without any lag. Amendment 70, however, changes all of that.

In the first instance, Amendment 70 creates a one-year lag between NeuStar's loss of transactions to a competitor and its loss of revenue. This lag means that, between now and 2016, either a new entrant would have to forego any fees for the first year it provides NPAC services or NAPM would have to pay more in aggregate NPAC fees for at least that year than it would have if NeuStar handled 100% of porting transactions. By itself, this erects a substantial barrier to entry that did not previously exist and that buttresses NeuStar's NPAC monopoly.

Amendment 70 does not stop there; it creates additional barriers to competition. Under Amendment 70, NeuStar would not see its revenues reduced *at all* unless it lost approximately 30% of the market. Therefore, industry – and consumers – will not save a penny unless a new vendor gains market share exceeding 30%. This is true even if the competitor were to charge nothing (which, of course, would be an irrational and