

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
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Petition of Telcordia Technologies, Inc. to Reform)
or Strike Amendment 70, to Institute Competitive) WC Dkt. No. 09-109
Bidding For Number Administration, and to End)
the NAPM LLC's Interim Role in Number)
Portability Administration Contract Management)

REPLY COMMENTS OF TW TELECOM

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tw telecom inc. ("TWTC"), through its undersigned counsel, hereby submits these reply comments in response to the *Petition*¹ filed by Telcordia in the above-referenced proceeding.²

TWTC files these limited reply comments to address Telcordia's contention that the Uniform Resource Identifier ("URI") fields necessary for the routing of IP-IP voice calls ("IP Voice"), multimedia messaging service ("MMS") and short messaging service ("SMS") transmissions should not be incorporated into the Number Portability Administration Center ("NPAC") database. Telcordia has attacked the incorporation of the URI fields on three fronts:

¹ See Petition of Telcordia Technologies, Inc. to Reform or Strike Amendment 70, to Institute Competitive Bidding For Number Administration, and to End the NAPM LLC's Interim Role in Number Portability Administration Contract Management, WC Dkt. No. 09-109 (filed June 24, 2009) ("*Petition*").

² See *Wireline Competition Bureau Seeks Comment on Telcordia Petition 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*, Public Notice, WC Dkt. No. 09-109, DA-09-1762 (rel. Aug. 6, 2009).

by filing (a) a dispute with the North American Numbering Council (“NANC”)³, (b) a request for an “interim standstill” (“standstill request”) with the FCC⁴ and (c) the instant *Petition*.

To begin with, the FCC should not rule on either the standstill request or the *Petition* at this time. It should instead wait until after the NANC has submitted its recommended decision regarding the dispute Telcordia brought before the NANC and the Wireline Competition Bureau (“Bureau”) has ruled on that recommended decision. The FCC would benefit from the NANC’s input because many of Telcordia’s arguments against inclusion of the URI fields in the database turn on whether the Local Number Portability Working Group (“LNPA-WG”), which operates under the auspices of NANC, properly followed its own internal processes in approving the fields. Moreover, if the Bureau rules in Telcordia’s favor in the NANC dispute, Telcordia’s standstill request and the portions of the *Petition* that pertain to inclusion of the URI fields will be moot. Sound administrative policy therefore supports holding the *Petition* or standstill request in abeyance until the Bureau has ruled on the NANC’s recommended decision.

In any event, there is no merit to Telcordia’s assertion that the IP Voice, MMS or SMS URI fields should not have been added to the NPAC database. As explained below and in the initial comments of Neustar, CompTel and Sprint, the inclusion of the three URI fields at issue in

³ See Letter from John T. Nakahata, Counsel, Telcordia Technologies, Inc., to Thomas M. Koutsky, Chairman, NANC, at 1 (May 26, 2009) (“*Telcordia Dispute*”) (“Pursuant to Section 52.26(b)(3)...Telcordia...brings before the North American Numbering Council...a dispute with respect to the decision by the North American Portability Management LLC...to adopt and execute Amendment 72 to the extent that it includes Change Orders NANC 429, 430 and 435....for the inclusion in the NPAC database and provision through that database of Uniform Resource Identifier...fields for Voice, Multimedia Messaging Service...and Short Messaging Service..., respectively.”).

⁴ See Letter from John T. Nakahata, Counsel, Telcordia Technologies, Inc., to Ms. Julie Veach, Acting Chief, Wireline Competition Bureau, FCC, WC Dkt. No. 07-149, at 1 (filed May 22, 2009) (“Telcordia Technologies, Inc....,hereby renews its request for an interim standstill order regarding the implementation of URI fields in the NPAC database pursuant to Change Orders NANC 429, 430 and 435.”).

the NPAC database is both lawful and increasingly necessary to ensure that calls are routed correctly and efficiently as networks continue to transition toward an all-IP environment.

Therefore, the FCC should deny both the standstill request and the *Petition*.

DISCUSSION

The FCC should not rule on the *Petition* or the standstill request at this time. It should instead wait until the Bureau has had a chance to rule on the NANC's recommended decision regarding the dispute Telcordia submitted to the NANC. Telcordia has been forum-shopping to obtain a ruling that would remove the URI fields from the NPAC database. It has filed the instant petition, a standstill request with the FCC, and a formal dispute request with the NANC. Telcordia has raised similar issues and made similar arguments in all of these contexts.

But the NANC process should proceed first. Indeed, the rule under which Telcordia filed its dispute request with the NANC states that parties should bring disputes involving numbering issues to the NANC, not the FCC.⁵ "If any party objects" to a decision of the NANC, as Telcordia did in this case, "the NANC shall issue a written report summarizing the positions of the parties and the basis for the recommendation adopted by the NANC."⁶ The report must then be forwarded to the Bureau and be made available for public comment. If the Bureau Chief does not act on the recommended decision within 90 days of the end of the comment cycle, the NANC recommendation will be adopted by the Bureau by default.⁷

The FCC should let this process run its course. Not only would the FCC benefit from the record developed at the NANC, but there are certain threshold issues raised in Telcordia's

⁵ See 47 C.F.R. § 52.26(b)(3).

⁶ See *id.*

⁷ See *id.*

dispute related to internal NANC procedures. NANC's decision on these matters will likely turn on the specific manner in which the URIs were adopted by the NAPM and LNPA-WG. The NANC is uniquely situated to provide an informed decision on these fact-intensive matters. For example, in the dispute it filed with the NANC, Telcordia argued that, while the change orders were approved by the NANC, "[n]o separate vote was taken with respect to Change Orders 429, 430, 431, 432 or 435....At this meeting a participant wanted to discuss the inclusion of the URI change orders and was told that the prioritization procedures did not permit such a vote."⁸

Because of purported procedural defects during the voting process, "a true consensus," which is required by the LNPA-WG rules for adoption of a change order, was never reached.⁹ Telcordia further alleges that "it does not appear from the LNPA minutes that the LNPA WG ever voted specifically and individually to provide the inclusion of the Voice and MMS URIs."¹⁰ Because these assertions bear directly on NANC procedures and turn on specific facts known best by NANC members, the NANC should have the first opportunity to pass on these matters.

Waiting for the NANC's recommended decision would also be sound administrative practice because it may obviate the need for the FCC to address aspects of the *Petition* or the standstill request. For example, if the Bureau rules in Telcordia's favor after reviewing the NANC's recommended decision, the FCC need not consider any other issues related to the inclusion of URI fields raised in the *Petition* or the standstill request.

In addition to being unripe for current consideration, Telcordia's arguments are substantively without merit. There can be no doubt that the inclusion of the IP Voice, MMS and

⁸ See *Telcordia Dispute* at 6.

⁹ See Letter from John T. Nakahata, *supra* note 4, at 3.

¹⁰ See *Telcordia Dispute* at 10.

SMS URIs in the NPAC database will benefit consumers and carriers by “enabling new IP services, increasing the efficiency of IP networks, and facilitating the transition to IP-based networks.”¹¹ Today, many (but not all)¹² of these services can be routed via the NPAC through the PSTN by converting from IP to TDM and then back again, but this process “creates network inefficiencies and the potential for diminished call quality.”¹³ By incorporating the IP Voice, MMS, and SMS URIs in the database already used for routing circuit-switched telephone calls, IP voice and text messaging traffic can be transmitted more efficiently and with fewer routing errors.¹⁴ There is no reason to handicap the development of new services by arbitrarily excluding crucial data fields from the NPAC.¹⁵ The inclusion of these data fields in the NPAC also advances the FCC’s stated policy objective to “ensure that consumers retain th[ese] [LNP-

¹¹ See Opposition of Neustar, Inc., WC Dkt. No. 09-109, at 16 (Sept. 8, 2009) (“*Neustar Opposition*”).

¹² See Letter from Thomas J. Navin, Counsel, Neustar, to Hon. Betty Ann Kane, Chairman, District of Columbia PSC, *et al.*, at 17 (Aug. 14, 2009) (“*Neustar Letter*”), attached to Letter from Thomas J. Navin, Counsel, Neustar, to Ms. Marlene H. Dortch, Secretary, FCC, WC Dkt. No. 09-109 (Aug. 14, 2009) (“In fact, many IP services do not function if transcoded to TDM, they must be transmitted in an IP format from origination to termination.”).

¹³ *Neustar Opposition* at n.43.

¹⁴ See *Neustar Letter* at 17 (“As the carriers point out, prohibiting such IP parameters because carriers could revert to the legacy network can lead to transcoding and other errors that will only increase in frequency as new IP services are deployed.”).

¹⁵ See Letter from Karen Reidy, Vice President, Regulatory Affairs, CompTel, to Hon. Betty Ann Kane, Chairman, District of Columbia PSC, *et al.*, 3 (Aug. 14, 2009) (“*CompTel Letter*”), attached to CompTel Comments, WC Dkt. No. 09-109 (Sept. 8, 2009) (“In fact, Crossfire Media recently estimated that 90% of interLATA PSTN and 60% of the intraLATA PSTN has been updated with Internet protocol (‘IP’) technology.”).

related] benefit[s] as technology evolves [because] Congress’s intent is that number portability be a ‘dynamic concept’ that accommodates such changes.”¹⁶

Telcordia did not address these benefits in its *Petition*. It argued instead that the *process* by which the URIs were adopted was defective. Telcordia asserted that the change orders were incorporated into the NPAC database improperly because there was no express finding by the NANC or the FCC that these URIs are “necessary to route telephone calls to the appropriate telecommunications carrier[s]” under Section 52.25(f) of the Commission’s rules.¹⁷ But Telcordia fails to demonstrate why either the NANC or the FCC must make this decision. As Neustar argued, in adopting the URIs at issue here, the LNPA-WG and NAPM LLC followed the same process that they have followed “for hundreds of change orders over more than a decade since the inception of the NPAC database.”¹⁸ Under that process, neither the full NANC nor the FCC is involved in determining whether data elements should be added to the NPAC. Instead, “the LNPA WG, on behalf of the NANC, considers the addition of [new data].... Then, those changes that the LNPA WG approves are forwarded to the NAPM LLC for its consideration.”¹⁹

Nor is there any requirement that the NAPM and LNPA-WG make a separate, explicit finding that the information at issue is “necessary to route telephone calls” before adopting additional fields for inclusion in the database. The NAPM and LNPA-WG have never made

¹⁶ *Telephone Number Requirements for IP-Enabled Services et al.*, Report and Order, Declaratory Ruling, Order on Remand and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, ¶ 23 (2007) (“*VoIP Number Portability Order*”).

¹⁷ *See Petition* at 41 (internal cites omitted).

¹⁸ *See Neustar Letter* at 3.

¹⁹ *See id.* at 6.

such a finding when voting on the hundreds of previous change orders. There is no reason to change the process now.

In any event, inclusion of the IP Voice, MMS and SMS URI fields into the database is consistent with the substantive terms of Section 52.25(f). Telcordia asserts that, under Section 52.25(f), only data fields necessary to properly route circuit-switched telephone calls may be included in the NPAC database.²⁰ But this conclusion is not supported by the language of Section 52.25(f) or FCC precedent. Telcordia's interpretation also runs counter to the Commission's intent to provide flexibility in the number administration process and to ensure the proper routing of voice and data from one service utilizing numbering resources to another.²¹

First, the meaning of the phrase "telephone calls" in Section 52.25(f) is much broader than a circuit-switched phone call and sweeps in all communications between services utilizing numbers. As Sprint explains, "the Internet addresses and naming protocols associated with URIs are considered call routing information because they are associated with a telephone number."²² This reading is supported by the FCC's statutory interpretation of "call." For example, the TCPA prohibits certain "telephone calls," including autodialed calls. As CompTel argues, the FCC found that, in the TCPA context, a "call" includes "both voice calls and text calls to wireless numbers, including, for example, short message service (SMS) calls, provided the call is

²⁰ See *Petition* at 41.

²¹ See *Neustar Letter* at 15 ("[I]t has always been recognized that the concept of number portability--via the NPAC database--encompasses more than the mere routing of telephone calls.... Thus, if the NPAC were limited solely to the information 'necessary' to route real-time voice transmissions as Telcordia argues, it would not contain nearly enough information to achieve its essential purpose--number portability.").

²² See Comments of Sprint Nextel, WC Dkt. No. 09-109, at 2 (Sept. 8, 2009).

made to a telephone number assigned to such service.”²³ The Ninth Circuit upheld this definition, noting that texts, like voice calls, can reasonably be understood to fall within the dictionary definition of “call,” namely, “to communicate with or try to get in communication with a person by telephone.”²⁴ There is no reason to adopt a different interpretation of “call” for purposes of Section 52.25(f).²⁵

Indeed, the FCC has always intended that the phrase “telephone calls” in Section 52.25(f) should be construed broadly to take into account the evolution of those communications services that utilize numbers. For example, many of the data elements in the NPAC database currently have little or nothing to do with the routing of circuit-switched voice telephone calls, but instead enable number portability to function or use numbering resources more generally.²⁶ Telcordia has not even attempted to argue that these fields were incorporated into the database in violation of Section 52.25(f).

In addition, numbering resources are being used for all manner of communications services including VoIP, texting, and e-fax services. The FCC has explicitly permitted companies, many of which are non-carriers, to obtain access to numbering resources to promote

²³ *CompTel Letter* at 3 (citing *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, ¶ 165 (2003)).

²⁴ *Id.* at 3-4 (citing *Satterfield v. Simon & Schuster, Inc.*, No. 07-16356, 7329, 7343-4 (9th Cir. June 19, 2009), available at <http://www.ca9.uscourts.gov/datastore/opinions/2009/06/19/07-16356.pdf>.)

²⁵ *Id.* at 3.

²⁶ *See Neustar Letter* at 15-16 (“For example..., the NPAC contains fields associated with CLASS, LIDB and CNAM services, among others, all of which enable number portability but would not meet Telcordia’s overly narrow definitions.”).

the growth of these new, innovative services.²⁷ The fields encompassed by the change orders at issue here will only assist in that effort.

Second, Telcordia’s interpretation of the term “necessary” in Section 52.25(f) is unreasonably crabbed. Telcordia argues that, because “voice, MMS and SMS communications... are being completed today” through the use of third-party databases and not the NPAC, the IP Voice, MMS and SMS data fields are not “necessary” within the meaning of 52.25(f).²⁸ But as Neustar and CompTel explain, the purpose of the term “necessary” was not to exclude from the NPAC alternative ways to route “telephone calls” that are currently being routed via third-party databases.²⁹ In fact, the FCC did not want providers to have to rely on databases owned and controlled by their existing or potential competitors to route “telephone calls.”³⁰ As networks increasingly transmit both TDM and IP traffic between devices utilizing phone number identifiers, the NPAC database must have the capability to route all such “telephone calls.”

This is not to say that the “necessary” carve-out in Section 52.25(f) is meaningless. Rather, by including that term in the rule, the FCC intended to exclude from the NPAC data that

²⁷ See *VoIP Number Portability Order* ¶ 17 (“Moreover..., by requiring interconnected VoIP providers and their numbering partners to ensure that users of interconnected VoIP services have the ability to port their telephone numbers when changing service providers to or from an interconnected VoIP provider, we benefit not only customers but the interconnected VoIP providers themselves.”).

²⁸ See *Telcordia Dispute* at 12.

²⁹ See *CompTel Letter* at 2; *Neustar Letter* at 13-15.

³⁰ See *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, ¶ 48 (1996) (“*Number Portability First Report & Order*”) (holding that providers should not be required “to rely on databases, other network facilities or services provided by other telecommunications carriers in order to route calls to the proper termination point.”).

either has nothing to do with call routing or number administration in general or that would vary on a local basis. For example, the FCC explicitly held that the information necessary to provide E911 services should be excluded from the NPAC.³¹ Because each locality might have its own E911 requirements, it did not make sense to house data related to E911 in a region-wide database.³² By contrast, the URI data fields at issue here are used to route traffic in the same way across the country and without regard to the identity of a particular service provider. Inclusion of the URI data fields for IP Voice, MMS and SMS is therefore appropriate.

CONCLUSION

For the foregoing reasons, Telcordia's *Petition* should be denied.

Respectfully submitted,

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³¹ See *Number Portability First Report & Order* ¶¶ 99-100.

³² See *id.*