



1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

January 28, 2010

Thomas J. Navin
202.719.7487
tnavin@wileyrein.com

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *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, WC Docket No. 09-109*

Dear Ms. Dortch:

Yesterday, Rich Fruchterman and Michael O'Connor of Neustar, Inc. ("Neustar") and the undersigned of Wiley Rein LLP, on behalf of Neustar, met with Priya Aiyar, Wireline Competition Legal Advisor to Chairman Genachowski. The participants discussed the attached written presentation, which summarizes points made in the attached Opposition of Neustar to the above-referenced petition of Telcordia Technologies, Inc. original filed on September 8, 2009.

Sincerely,

/s/ Thomas J. Navin

Thomas J. Navin

cc: Priya Aiyar

Enclosures

NEUSTAR AND LOCAL NUMBER PORTABILITY

- In order to spur competition, the Telecommunications Act of 1996 requires telephone companies to provide local number portability. Local Number Portability allows consumers to keep their telephone number when they switch local carriers.
- Neustar facilitates Local Number Portability by maintaining databases that serve as regional local number portability administrative centers (NPAC).
- Neustar was chosen by the industry to provide LNP services. The contracts to administer these databases are negotiated by the North American Portability Management, LLC (NAPM) (membership is open to any telecommunications provider and consists today of AT&T, CenturyLink, Comcast, Qwest, Sprint Nextel, T-Mobile, Verizon, and XO Communications). These current members and their affiliated companies are responsible for paying the vast majority of the LNP costs. LNP is an example of carriers working together to solve a complex technological problem to the benefit of consumers.
- By their terms, the LNP contracts are non-exclusive and allow the NAPM to consider competitive proposals at any time. The NAPM has received several proposals and contract terms from other vendors, including Telcordia. The LNPA Working Group is currently examining one Telcordia proposal. Due to this continuous competitive pressure, per transaction prices have declined more than 60% since the inception of LNP.
- The NAPM selection and management processes are subject to oversight by the FCC and its advisory committee, the North American Numbering Council (NANC). The NANC conducts much of its detailed supervision of LNP through its Local Number Portability Administration Working Group (LNPA WG).
- In January 2009, Neustar and the NAPM amended their contracts in response to carriers' concerns about increasing and unpredictable costs as well as industry reluctance to utilize the database to its full capability for increased technological innovation.
- NAPM and Neustar negotiated an arms-length agreement – which was approved by the requisite supermajority of the NAPM -- that replaces the transaction-based pricing model with a fixed annual price. This amendment, Amendment 70, also provides a mechanism for modifying the price (both upwards and downwards) if the number of transactions falls outside an established band. The amendment does not extend the term of the contract.
- Amendment 70 provided carriers and their customers immediate and significant savings of almost \$50 million in 2009 alone, and potentially hundreds of millions over the remaining term of the contract.
- Another amendment adopted by the NAPM, Amendment 72, promotes technological innovation and broadband deployment by adding optional IP routing data to the NPAC. These data will benefit operators and consumers, enabling new IP services, increasing the efficiency of IP networks and facilitating the transition to broadband.
- These amendments do not affect Neustar's strict neutrality obligations.
- Another database vendor, Telcordia, has filed petitions seeking to overturn these cost reductions and the addition of IP routing options for carriers. Telcordia, the former Bell Communications Research (Bellcore) numbering monopoly, operates a routing database – the Local Exchange Routing Guide – and is developing an IP routing database for the Country Code 1 ENUM LLC, but is not subject to specific government oversight or neutrality obligations.
- For more than a decade, Neustar has, and will continue to, provide outstanding and reliable service as a neutral third-party administrator, ensuring the seamless functioning of number portability to the benefit of competition and consumers.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

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

WCB Docket No. 09-109

OPPOSITION OF NEUSTAR, INC.

Gerald J. Kovach
Jordan B. Goldstein
Richard L. Fruchterman
NeuStar, Inc.
2000 M Street, N.W.
Washington, D.C. 20036
(202) 533-2910

September 8, 2009

SUMMARY

NeuStar, Inc. (Neustar) opposes the Petitions of Telcordia Technologies Inc. (Telcordia) requesting the Commission's unnecessary intervention in the commercially negotiated contracts between Neustar and the North American Portability Management LLC (NAPM LLC) under which Neustar provides local number portability (LNP) administration services for the telecommunications industry.¹

Telcordia, the former Bell Communications Research (Bellcore) numbering monopoly, initiated these petitions as the latest tactics in a continuing strategy of seeking extraordinary Commission intervention to gain commercial advantage. Telcordia wrongly alleges that Amendments 70 and 72 of the Neustar and the NAPM LLC contracts institute an anti-competitive change to the LNP pricing structure and unlawfully add Internet Protocol (IP) routing information to the Number Portability Administration Center (NPAC) database.

To the contrary, these amendments save the industry and its customers approximately \$50 million in 2009 and potentially hundreds of millions over the remaining term of the LNP contracts. In addition, the inclusion of IP routing data in the NPAC database will lead to more efficient exchange of IP traffic between and among providers as well as new or expanded IP services and applications for consumers. These increased efficiencies and new services and applications will help to spur increased demand for broadband connectivity.

¹ Petition of Telcordia Technologies, Inc. to Reform or Strike Amendment 70, to Institute a Competitive Bidding for Number Portability Administration, and to End LLC's Interim Role in Number Portability Administration Contract Management, WC Docket No. 07-149 (May 20, 2009) (Telcordia Amendment 70 Petition).

Telcordia strains credulity by asserting that Neustar, when it responded to industry concerns and agreed to modify existing contracts to reduce prices significantly and to add new IP routing options, foisted an anticompetitive and over-priced contract amendment upon the NAPM LLC, the industry consortium that oversees local number portability administration. The NAPM LLC is comprised of some of the world's largest and most sophisticated carriers, including AT&T, Comcast, CenturyLink, Qwest, Sprint Nextel, T-Mobile, Verizon, and XO Communications, which are represented by experienced negotiators focused on acting in the best interests of their companies and their customers in obtaining the highest quality of service and lowest price for local number portability administration, just as they would from any vendor. Yet somehow, if Telcordia is to be believed, Neustar took undue advantage of these industry giants.

Over the past decade, Neustar, a publicly-traded corporation subject to Commission oversight, has provided exemplary service as a neutral third-party administrator of the NPAC on behalf of the NAPM LLC, ensuring the seamless functioning of number portability to the benefit of competition and consumers. During that time, the NAPM LLC allowed other vendors, including Telcordia, to submit competitive qualifications and contract terms. Telcordia participated in that process and submitted several proposals. Although none of Telcordia's proposals have been selected by the industry body chosen by the Commission to review competitive submissions, one is currently before an industry subcommittee for review. In the meantime – keenly aware of the competitive environment – the industry renegotiated Neustar's contracts, resulting in tens of millions of dollars in annual cost savings. Now Telcordia is running to the

Commission, seeking extraordinary intervention simply because it did not like the outcome of this competitive process.

Telcordia today operates a database used for routing purposes by telecommunications carriers – known as the Local Exchange Routing Guide (LERG) – and other similar databases. Telcordia is also a competitor in the IP routing database market as the Country Code 1 ENUM LLC clearinghouse. Telcordia now seeks to prevent changes to the NPAC databases that would accommodate new technologies and promote competition as the industry evolves. Telcordia’s self-serving strategy is nothing more than an attempt to gain competitive advantage for itself at the expense of the Commission’s efforts to evolve the Nation’s overall communications infrastructure in a broadband world.

Amendment 70 moves the industry to an LNP rate structure that serves it well and could save the industry and consumers hundreds of millions over the next few years. Amendments 70 and 72 together will help the transition to IP communications, leading to more rapid adoption of broadband technologies. Telcordia fails to identify any marketplace failure that warrants government intervention. Instead, the NAPM LLC’s actions are an example of carriers solving a complex technological problem to the benefit of consumers. The Commission should applaud the industry efforts to work together rather than accept the misleading arguments of a disgruntled vendor seeking to upend a process that has served the industry and consumers well for over a decade.

TABLE OF CONTENTS

I. BACKGROUND 4

A. Number Portability Administration..... 4

B. Development of the NPAC Database..... 8

**II. NEUSTAR HAS SERVED THE PUBLIC INTEREST BY FULFILLING ITS
LNP CONTRACT REQUIREMENTS AND ADVANCING THE
COMMISSION’S NUMBER PORTABILITY GOALS 9**

**III. AMENDMENTS 70 AND 72 TO THE MASTER AGREEMENTS BENEFIT
ALL PARTIES INVOLVED IN NUMBER PORTING 13**

**A. Amendments 70 and 72 Resulted From A Commercial Arm’s-Length
Negotiation..... 13**

**B. Amendments 70 and 72 Benefit The Industry, Consumers, and The Public
Interest 16**

**IV. TELCORDIA FAILS TO DEMONSTRATE ANY LEGAL OR POLICY BASIS
FOR ABROGATING AMENDMENT 70 17**

**A. The NAPM LLC Has the Authority to Negotiate a New Pricing Mechanism
in the Master Agreements 18**

B. The Master Agreements Are Not Exclusive 22

C. Amendment 70 Does Not Violate the Anti-Trust Laws..... 25

**1. Neustar Does Not Possess Market Power In any Relevant Antitrust
Market..... 26**

2. Telcordia’s Reliance On *LePage’s* Is Misplaced 28

3. The Contract Is Lawful And Is Not Anticompetitive 28

D. Amendment 70 Does Not Violate the Competition in Contracting Act 29

E. Amendment 70’s Severability Clause Is Lawful 34

F. Commission Precedent Forecloses Intervention in These Circumstances..... 35

**V. TELCORDIA HAS FAILED TO SATISFY ITS HEAVY BURDEN THAT A
PRELIMINARY INJUNCTION ON AMENDMENT 72 IS APPROPRIATE .. 39**

A. Telcordia Has Failed to Demonstrate a Likelihood of Success on the Merits42

**B. Telcordia Fails to Demonstrate that It Will Suffer Any Harm—Let Alone
Irreparable Harm—Absent Injunctive Relief 42**

**C. The Telecommunications Industry Will Be Harmed If Injunctive Relief Is
Granted to Telcordia 46**

**D. Granting Telcordia’s Request for Injunctive Relief Will Be Contrary to the
Public Interest 46**

VI. CONCLUSION 47

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

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

WCB Docket No. 09-109

OPPOSITION OF NEUSTAR, INC.

NeuStar, Inc. (Neustar) opposes the Petitions of Telcordia Technologies Inc. (Telcordia) requesting the Commission's unnecessary intervention in the commercially negotiated contracts between Neustar and the North American Portability Management LLC (NAPM LLC) under which Neustar provides local number portability (LNP) administration services for the telecommunications industry.²

Telcordia, the former Bell Communications Research (Bellcore) numbering monopoly, initiated these petitions as the latest tactics in a continuing strategy of seeking extraordinary Commission intervention to gain commercial advantage.

Over the past decade, Neustar, a publicly-traded corporation subject to Commission oversight, has provided exemplary service as a neutral third-party administrator of the Number Portability Administration Center (NPAC) on behalf of the NAPM LLC, ensuring the seamless functioning of number portability to the benefit of

² Petition of Telcordia Technologies, Inc. to Reform or Strike Amendment 70, to Institute a Competitive Bidding for Number Portability Administration, and to End LLC's Interim Role in Number Portability Administration Contract Management, WC Docket No. 07-149 (May 20, 2009) (Telcordia Amendment 70 Petition).

competition and consumers. During that time, the NAPM LLC allowed other vendors, including Telcordia, to submit competitive qualifications and contract terms. Telcordia participated in that process and submitted several proposals. Although none of Telcordia's proposals have been selected by the industry body chosen by the Commission to review competitive submissions, one is currently before an industry subcommittee for review. In the meantime – keenly aware of the competitive environment – the industry renegotiated Neustar's contracts, saving the carriers and their customers approximately \$50 million in 2009 alone and potentially hundreds of millions over the remaining term of the contract. Now Telcordia is running to the Commission seeking extraordinary intervention simply because it did not like the outcome of this competitive process.

It is especially offensive to notions of due process and appropriate Commission oversight that it is Telcordia crying foul and claiming it has been harmed. Today, Telcordia maintains absolute control over critical national telecommunications infrastructure. Specifically, it operates a database used for routing purposes by telecommunications carriers – known as the Local Exchange Routing Guide (LERG) – and other similar databases. The LERG was not bestowed upon Telcordia by virtue of its competitive prowess, but was simply inherited as a vestige of Telcordia's legacy as a Bell Telephone monopoly entity. In stark contrast to Neustar, Telcordia is now a non-public entity, owned by private equity funds that own telecommunications providers, that is not subject to specific regulatory oversight or neutrality requirements. Yet, more than a decade after the passage of the Telecommunications Act of 1996, Telcordia retains exclusive control over the LERG. By contrast, Neustar's existence is founded on the bedrock of the Commission's effort to foster competition which enabled Neustar to

compete and win the Local Number Portability Administrator (LNPA) contracts from the NAPM LLC.

In addition to its monopoly control over the LERG database, Telcordia is also a competitor in the IP database market as the Country Code 1 ENUM LLC clearinghouse. Indicating its apparent lack of comfort with competition in the database marketplace, Telcordia now seeks to prevent changes to the NPAC databases that will promote competition in the IP communications space as the industry evolves. Telcordia's self-serving strategy is nothing more than an attempt to gain competitive advantage for itself at the expense of the Commission's efforts to evolve the Nation's overall communications infrastructure in a broadband world.

In its Petitions, Telcordia strains credulity by asserting that, when Neustar agreed to modify existing contracts and significantly reduce prices – saving the carriers and their customers tens of millions of dollars this year alone – it foisted an anticompetitive and over-priced contract amendment upon the NAPM LLC, the industry consortium that oversees local number portability. In fact, the NAPM LLC is comprised of some of the world's largest and most sophisticated carriers, including AT&T, Comcast, CenturyLink, Qwest, Sprint Nextel, T-Mobile, Verizon, and XO Communications. NAPM LLC members are experienced negotiators focused on acting in the best interests of their companies and their customers in obtaining the highest quality of service and lowest price for number portability administration.

Telcordia fails to identify any marketplace failure that warrants government intervention. Telcordia's argument, in a nutshell, is that, in these tough economic times, some of the largest carriers in the world (who pay the costs of LNP administration) are

acting against their own self-interest and need Commission intervention to protect them from themselves. Instead, this is an example of carriers solving a complex technological problem to the benefit of consumers. The Commission should applaud the industry efforts to work together rather than accept the misleading arguments of a disgruntled vendor to upend a process that has served the industry and consumers well for over a decade.

Indeed, over the past fifteen years, the only time there has been a numbering database monopoly is when all databases were run by Bell Communications Research (Bellcore). The Commission established the NANC and the NAPM LLC in part to break up this monopoly. Here, Telcordia – the successor-in-interest to Bellcore – has the goal of disrupting this process and preventing the NAPM LLC’s efforts to evolve the NPAC database to ensure competitive options for carriers seeking to route traffic using Internet Protocol technology. The Commission must reject Telcordia’s self-serving attempts to thwart the very competition and technological advancement envisioned by Congress and implemented by the Commission.

I. BACKGROUND

A. Number Portability Administration

The ability of end users to retain their telephone numbers when switching service providers – *i.e.*, LNP – 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 Proposed Rulemaking.³ Shortly thereafter, but before the Commission acted on the rulemaking, Congress passed the

³ *Telephone Number Portability*, 10 FCC Rcd 12350 (1995).

Telecommunications Act of 1996⁴ adding Section 251 to the Communications Act of 1934. Section 251(b)(2) directs each local exchange carrier “to provide, to the extent technically feasible, number portability in accordance with the requirements prescribed by the Commission.”⁵

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,”⁶ 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.”⁷ 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. . . .”⁸

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,

⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁵ 47 U.S.C. § 251(b)(2).

⁶ *Telephone Number Portability*, 11 FCC Rcd 8352, 8400 (1996) (*First LNP Order*) (quoting 47 U.S.C. § 251(e)(1)) (emphasis added).

⁷ *Id.* (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.

⁸ *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).

state public service commission representatives, and other service providers.⁹ By the time that the LNPA Selection Working Group was organized, industry efforts already were well underway to select Local Number Portability Administrator(s) (LNPA(s)).¹⁰ The carriers organized themselves into seven regional limited liability companies (LLCs)¹¹ 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 NPAC database “Master Agreements” with the respective winning bidders in each region.¹²

Neustar’s predecessor, Lockheed-Martin IMS (LMIMS), won the bids in four regions, and Perot Systems (Perot) won in three. In each region, there was one LNPA. The LNPA Selection Working Group recommended that the NANC approve the LLCs’ vendor selections, and the NANC 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

⁹ *Telephone Number Portability*, 12 FCC Rcd 12281, 12289 & n.37 (1997) (*Second LNP Order*).

¹⁰ 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).

¹¹ The industry ultimately found the seven regional LLC structure to be unwieldy and consolidated the seven regional LLC structure into one LLC, the NAPM LLC, but maintained the seven regional contracts. *See* Letter from Dan A. Sciallo, Berenbaum, Weinshienk & Eason, PC, Counsel to NAPM LLC, to Thomas Koutsky, Chairman, North American Numbering Council at 3 & n.3 (Apr. 11, 2007) (NAPM Letter).

¹² *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).

serve as local number portability database administrators.”¹³ No party, including Telcordia’s predecessor, Bellcore, objected to the recommended single LNPA in each region.¹⁴

While LMIMS thrived in its role as LNPA, Perot struggled. With the 1998 “Phase I” deadline for LNP implementation approaching, the regional LLCs that initially selected Perot decided to replace it with LMIMS.¹⁵ This decision to change vendors and thereby establish a single LNPA nationwide was unanimously approved by NANC as “essential in successfully implementing [number portability] in these regions”¹⁶ and accepted without comment by the Commission.¹⁷ LMIMS continued as the LNPA until 1999, when its parent company, Lockheed Martin, expressed its intent to purchase a telecommunications carrier. To preserve the numbering administrator’s neutrality,¹⁸ LMIMS’s numbering administration responsibilities were transferred to a separate entity, Neustar,¹⁹ which assumed the Master Agreements between the regional LLCs and LMIMS.

¹³ *Second LNP Order*, 12 FCC Rcd at 12306.

¹⁴ *See id.* at 12303; LNPA Selection Working Group Report § 6.2.4.

¹⁵ *See Telephone Number Portability*, 13 FCC Rcd 11701, 11709-10 (1998) (*Third LNP Order*).

¹⁶ *Telephone Number Portability*, 13 FCC Rcd 10811, 10815 n.25 (CCB 1998) (quoting Letter from Alan C. Hasselwander, Chairman, North American Numbering Council, to A. Richard Metzger, Jr., Chief, Common Carrier Bureau, FCC (February 20, 1998)).

¹⁷ *See Third LNP Order*, 13 FCC Rcd at 11709-10.

¹⁸ Neutrality is an overarching principal for the LNPA. *See infra* at 11-12.

¹⁹ *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*).

B. Development of the NPAC Database

Prior to the implementation of LNP in 1997, the first six digits of an end-user's 10-digit telephone number (NPA-NXX) identified both the end-user's specific service provider and the telephone number's serving switch.²⁰ The LERG – which was originally operated by Bellcore – was created to facilitate the routing of telephone calls under the NPA-NXX system. Telcordia continues the exclusive operation of the LERG database today.

Upon implementation of LNP, NPA-NXXs were still associated with specific service providers and switches.²¹ LNP, however, “broke” this association for individual 10-digit telephone numbers such that numbers within an NPA-NXX could be served by different service providers and switches.²² The NPAC, which is administered by Neustar, was deployed to facilitate LNP. This database “serves as the central mediation system and source database for all number portability data.”²³ Accordingly, today, the LERG remains an indispensable component to call routing as the general routing database at the NPA-NXX level, while the NPAC serves as an exception database to provide routing at the individual number level.

The NPAC was designed not just to store ported numbers and their associated LRNs, but also “non-call-routing-related information necessary to properly route

²⁰ See Future of Numbering Working Group, Report and Recommendation on NANC Change Orders 399 & 400 at 7 (June 10, 2005) (FoN WG Report).

²¹ *Id.*

²² *Id.*

²³ *Id.* at 16.

messages related to services and functionality also ‘broken’ by LNP.”²⁴ Specifically, the initial release of the NPAC included fields associated with Custom Local Area Signaling Services (CLASS), Line Information Data Bases (LIDB), Calling Name Data Bases (CNAM), and Inter-Switch Voice Messaging Message Waiting Indicating (ISVM MWI). A subsequent release added fields to permit routing of Wireless Short Message Service text messaging, “a wireless feature also impacted by LNP in a similar manner to CLASS, LIDB, CNAM, and ISVM MWI.”²⁵ Like ordinary telephone service, these services also relied on an end-user’s NPA-NXX to indicate a target database or switch.²⁶ However, rather than an LRN, each ported number was assigned a destination point code and subsystem number (DPC/SSN) for SS7 message routing.²⁷

II. NEUSTAR HAS SERVED THE PUBLIC INTEREST BY FULFILLING ITS LNP CONTRACT REQUIREMENTS AND ADVANCING THE COMMISSION’S 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. Congress’ and the Commission’s directives on number portability have been fully implemented to the benefit of competition and consumers.

²⁴ *Id.* at 7.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 12.

The NPAC database is essential to routing correctly telecommunications traffic throughout our nation and is ““a key emergency service recovery tool””²⁸ “during a catastrophic network failure.”²⁹ 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 the LNP administrator, Neustar has ensured the seamless functioning of this database, rapidly integrated new technologies into the portability process, and resolved expeditiously number portability issues, including disputes 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. Significantly, Telcordia does not challenge or criticize Neustar’s administration of the NPAC. Nor could it. 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.³⁰ Indeed, Neustar consistently meets and frequently exceeds a thorough and stringent set of industry-defined service delivery metrics. During the time at issue in Telcordia’s Petition, and right through the present, Neustar’s service has been

²⁸ N.Y. Pub. Serv. 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).

²⁹ *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).

³⁰ See NAPM Letter.

outstanding. From 2005 through the present, Neustar has met or exceeded the Service Level Requirements (SLRs) under the Master Agreements 99.7% of the time. In addition, in 2005, 2006, 2007 and 2008 Neustar achieved scores of 4.0, 4.4, 4.4 and 4.5 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.³¹ This continuing excellent service has been provided during a time of increasing system complexity and transaction volume. Such high quality service performance is characteristic of a supplier committed to maintaining its competitive edge by providing high value, quality services at fair market-based prices.

It is also important to note that in managing the NPAC database, Neustar has complied with the rigorous neutrality requirements.³² Under the Master Agreements, Neustar is required to be a “Neutral Third Party.”³³ To maintain its neutrality, as required by the Commission and the Master Agreements, Neustar has implemented layers of procedures and protections. As the LNPA, Neustar has agreed to adhere to a Code of Conduct and undergo regular neutrality audits.³⁴ The audit reports are provided to the

³¹ 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 2009 benchmark audit is currently underway.

³² See NeuStar, Inc. Prospectus at 61, 67, SEC Registration No. 333-123635 (June 28, 2005).

³³ 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.

³⁴ 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

NAPM LLC. 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.³⁵ 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 obligations.³⁶ 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.³⁷ Since Neustar replaced LMIMS as the LNPA, it has assiduously maintained its neutrality. Support by the broad-based NAPM LLC confirms Neustar's demonstrated neutrality and pro-competitive performance of its LNPA functions.

are provided to the Commission and the NANC. *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, 19813-14 (1999).

³⁵ *Id.* at 19813; *see* 47 C.F.R. § 52.12(a).

³⁶ *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).

³⁷ *Second LNP Order*, 12 FCC Rcd at 12349, 12351.

III. AMENDMENTS 70 AND 72 TO THE MASTER AGREEMENTS BENEFIT ALL PARTIES INVOLVED IN NUMBER PORTING

A. Amendments 70 and 72 Resulted From A Commercial Arm's-Length Negotiation

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.³⁸

The most recent price reductions, which Telcordia challenges in its Petition, were the result of an arms-length commercial negotiation. The modification, known as Amendment 70, was executed on January 28, 2009.³⁹ Contrary to Telcordia's assertions, this amendment was not entered into to thwart potential competition. Instead, the amendment sought to address industry concerns about increasing costs in a transaction-based environment and related reluctance to allow the NPAC to advance as technology evolves. Specifically, although the per-transaction cost of using the NPAC database had decreased nearly 60 percent in a decade, the volume of transactions had been significantly increasing, causing overall NPAC costs to increase and creating a hesitation to introduce new functionality. In this environment, the most reasonable method for controlling costs involved implementation of a fixed-price mechanism.

³⁸ NAPM Letter at 3-4.

³⁹ Amendment No. 70 to Contractor Services Agreement for Number Portability Administration Center/Service Management System (Extension and Modification), effective January 28, 2009, by and between NeuStar, Inc. and the North American Portability Management LLC (Amendment 70). Seven identical versions of Amendment 70 were executed, each corresponding to a regional Master Agreement.

Through Amendment 70, the NAPM LLC and Neustar negotiated and implemented such a fixed-rate price mechanism. Amendment 70 further provides a mechanism for modifying the price (both upwards and downwards) if the number of transactions falls outside an established band. Contrary to Telcordia's assertions in its petition, Amendment 70 only addresses pricing and technology issues; it does not at all address or extend the term of the contract.

In a fixed-price environment, the industry would have less concern about allowing the NPAC to evolve as technology advances. Amendment 70 therefore also included an option for the carriers to receive a credit if the industry later decided that the database should include new numbers and IP data parameters. On May 20, 2009, the NAPM LLC decided to adopt Amendment 72 (a statement of work or SOW) to the Master Agreements.⁴⁰ This amendment authorized implementation of Voice Uniform Resource Identifiers (Voice URI), Multimedia Messaging Services (MMS) URI, and Short Messaging Service (SMS) URI data parameters into the database to facilitate IP-IP routing of these services. These parameters were to be implemented using an "Optional Data" field that had been previously established to provide a method for easily adding individual data elements without requiring further changes to the NPAC interfaces. With the introduction of the Optional Data field in NANC Change Order 399, the first such parameter was established – the "alternate SPID" to identify the local service provider such as a reseller, MVNO, or VoIP provider. Since that time, six more Optional Data

⁴⁰ Amendment No. 72 to Contractor Services Agreement for Number Portability Administration Center/Service Management System (Implementation of NANC 429, NANC 430 and NANC 435), effective May 20, 2009, by and between NeuStar, Inc. and the North American Portability Management LLC (Amendment 72). Seven identical versions of Amendment 72 were executed, each corresponding to a regional Master Agreement

Parameters have been established, three of which are the ones at issue in Telcordia's challenge to Amendment 72.

Telcordia alleges that Amendments 70 and 72 are anticompetitive and detrimental to the industry and consumers. This characterization of the Amendments, however, is simply absurd in light of the fact that the NAPM LLC *is comprised of carriers who pay the vast majority of LNP costs*. The NAPM LLC is open to any carrier subject to the FCC's porting rules and consists today of a broad range of carriers from various industry segments. Indeed, the multiple modifications and enhancements to the NPAC database negotiated and approved by the parties over the years have responded to regulatory, industry, technological, and financial changes and have led to improvements to the NPAC database, substantially reduced prices, and improved service level requirements monitoring.⁴¹ Amendment 70 and Amendment 72, like all of the previous amendments and statements of work, respond to industry desires and promote the public interest.

As the industry representative with respect to number portability, the NAPM LLC has amended its contract with Neustar, not because of some desire to promote Neustar's interests, but rather because the amendments will benefit the *entire* telecommunications industry, consumers, and the public interest. As the Commission has recognized, the NAPM LLC is better situated than any other entity to understand the NPAC database and how it can fulfill the needs of carriers.⁴² The NAPM LLC is focused on acting in the best interests of the carriers and their customers in obtaining the highest quality of service and

⁴¹ NAPM Letter at 3-4.

⁴² *Second LNP Order*, 12 FCC Rcd at 12346.

lowest price for number portability administration. Thus, Telcordia's argument that the NAPM LLC has sought to promote Neustar's interests at the expense of the carriers and their customers makes no sense given the nature of the organization and its role in the telecommunications industry.

B. Amendments 70 and 72 Benefit The Industry, Consumers, and The Public Interest

Since it first assumed LMIMS's contract, Neustar has operated the NPAC database in a manner that promotes the interests of the industry. Amendments 70 and 72 simply represent the next step in the evolution of the database. Indeed, the amendments respond to the carriers' concerns about increasing and unpredictable costs, as well as the consequent industry reluctance to use the database in a manner that recognizes its full potential for increased technological innovation. By replacing the transaction-based pricing model with a fixed annual price, Amendment 70 resulted in immediate and significant savings of approximately \$50 million in 2009 alone, such that the industry will pay tens of millions of dollars less for NPAC service in 2009 than it paid in 2008 – despite a continuing increase in the number of NPAC transactions. These cost reductions will continue throughout the remaining term of the contract, potentially saving the carriers and their customers hundreds of millions of dollars.

Moreover, the inclusion of Voice, MMS, and SMS URIs in the database pursuant to Amendment 72 will benefit operators and consumers by enabling new IP services, increasing the efficiency of IP networks, and facilitating the transition to IP-based networks. Certain IP services today are limited because of the lack of IP routing information necessary for the exchange of IP traffic across the networks of other providers. By providing this IP routing information, the Voice, MMS and SMS URIs

enable the efficient exchange of voice, video, and data between networks in an IP-to-IP format.⁴³ The expanded reach of these IP services will increase their utility to consumers, leading to greater adoption of IP services, development of new IP applications, thereby spurring the demand for broadband connectivity.

Accordingly, Telcordia's assertion that Amendments 70 and 72 will harm the public is belied by the facts. The NAPM LLC, as the industry representative, has negotiated these amendments to promote the interests of the carriers and their customers. The Commission should not now second-guess the NAPM LLC's reasonable conclusions and deprive the industry of the cost savings and enhanced services resulting from the amendments.

IV. TELCORDIA FAILS TO DEMONSTRATE ANY LEGAL OR POLICY BASIS FOR ABROGATING AMENDMENT 70

According to Telcordia, Amendment 70 exceeds the NAPM LLC's authority by, as Telcordia wrongly asserts, extending the Master Agreements with Neustar and establishing Neustar as the lone NPAC administrator.⁴⁴ Telcordia also contends that the amendment is unlawfully anticompetitive,⁴⁵ violates the Competition in Contracting

⁴³ Telcordia asserts that voice calls originating in IP can be routed between networks today without URIs by relying on the legacy PSTN to route the call to the terminating provider. Such routing, however, requires that the call be transcoded from IP to a time division multiplexing (TDM) format for routing to the terminating provider, which may then transcode the call back to IP for termination to the consumer. Such forced transcoding creates network inefficiencies and the potential for diminished call quality. For non-voice IP services such as MMS and SMS, transcoding to TDM is not an option. *See* Letter from Dan A. Sciallo, Berenbaum Weinshienk PC, Counsel to NAPM LLC, to Marlene H. Dortch, Secretary, FCC, at n.5 & 5 (Jun. 18, 2009) (*NAPM Ex Parte*).

⁴⁴ Telcordia Amendment 70 Petition at 26.

⁴⁵ *Id.* at 35-37.

Act,⁴⁶ and contains an unlawful severability clause.⁴⁷ These arguments, however, are without merit. Amendment 70 resulted from arm's-length negotiations between Neustar and the NAPM LLC, the industry's representative in number portability issues. The NAPM LLC possessed the authority to adopt Amendment 70, which it reasonably determined would benefit the industry. Contrary to Telcordia's assertions, the NAPM LLC was in no way required to conduct another competitive procurement for this mid-term contract amendment. Accordingly, there exists no basis for the Commission to interfere with the NAPM LLC's reasonable decision to adopt Amendment 70.

A. The NAPM LLC Has the Authority to Negotiate a New Pricing Mechanism in the Master Agreements

Telcordia argues that the pricing mechanism implemented by Amendment 70 constitutes a barrier to competition.⁴⁸ As such, Telcordia contends that the NAPM LLC has usurped the Commission's authority by effectively extending the length of the Master Agreements and determining the structure of the NPAC industry. That is, Telcordia argues that the NAPM LLC – as opposed to the Commission – has unlawfully decided that Neustar will be the lone NPAC administrator until 2015. Telcordia, however, completely mischaracterizes Amendment 70.

Amendment 70 was not, as Telcordia suggests, added to the Master Agreements as part of some collusive effort between Neustar and the NAPM LLC to ensure Neustar's market supremacy in number portability administration. Rather, Amendment 70 resulted from concerns raised by carriers that the costs of the NPAC database had been increasing

⁴⁶ *Id.* at 38-40.

⁴⁷ *Id.* at 43-45.

⁴⁸ Telcordia Amendment 70 Petition at 26.

under the previous pricing mechanism notwithstanding the ever decreasing cost for each transaction. To promote the best interests of the carriers who fund LNP administration, the NAPM LLC engaged in arms-length negotiations with Neustar to implement a new pricing mechanism with respect to the Master Agreements that saves the carriers and their customers tens of millions of dollars this year alone. Moreover, nowhere in the Amendment does it extend the terms of the Master Agreements or declare Neustar to be the sole NPAC administrator.

Based on Commission precedent, there is simply no basis on which to conclude that Commission approval was required for the NAPM LLC to negotiate this new pricing mechanism to reduce the industry's costs.⁴⁹ In its *Second LNP Order*, the Commission adopted the NANC's recommendation that the NAPM LLC "*provide immediate oversight and management of the [Administrators].*"⁵⁰ It explained that "the LLCs were responsible for negotiating the contracts with their respective local number portability administrators,"⁵¹ such that neither the NANC nor the Commission took a role in those negotiations or otherwise reviewed or approved the Master Agreements. Therefore, there was no indication that NANC or Commission oversight or review of the agreements

⁴⁹ The D.C. Circuit's decision in *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004), does not, as Telcordia asserts, require the Commission to "construe narrowly NAPM's authority to 'manage and oversee' the NPAC." See Telcordia Amendment 70 Petition at 28. In that case, the court held that federal agencies "may not subdelegate [authority] to outside entities-private or sovereign-absent affirmative evidence of authority to do so." *United States Telecom Ass'n*, 359 F.3d at 566 (emphasis added). Here, Congress explicitly mandated that a neutral outside entity should "administer telecommunications numbering." See 47 U.S.C. § 251(e)(1) (stating that the Commission shall "create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis").

⁵⁰ *Second LNP Order*, 12 FCC Rcd at 12345 (emphasis added).

⁵¹ *Id.* at 12346.

“would be preferable to LLC oversight.”⁵² The Commission determined that the LLCs are “best able to provide immediate oversight of the [Administrators],”⁵³ and as such, provided that the NANC should have only the limited role of reviewing and overseeing the LLCs’ management of the Administrators, subject to Commission review.⁵⁴ Thus, the decision to adopt Amendment 70 plainly fell within the NAPM LLC’s authority as envisioned by the Commission.

In fact, the NAPM LLC (and its predecessors, the seven regional LLCs) has modified the Master Agreements numerous times without Commission approval since 1997.⁵⁵ Indeed, all of these modifications – which included, *inter alia*, improvements in price structure and enhancements to the NPAC database in response to technological and financial developments – complied with all of the NAPM LLC’s procedures and requirements and incorporated input and recommendations from subject matter expert groups.⁵⁶ Because Amendment 70 was adopted pursuant to these same longstanding procedures – including approval by a supermajority of the carrier representatives – there is simply no basis for the Commission to abrogate Amendment 70 as Telcordia requests.

⁵² *Id.* at 12351.

⁵³ *Id.* at 12346.

⁵⁴ *Id.* at 12345; *see also* 47 C.F.R. § 52.26(b)(2) (stating that the LLCs “shall manage and oversee the [Administrators], subject to review by the NANC”); *id.* § 52.26(b)(3) (“The NANC shall provide ongoing oversight of number portability administration, including oversight of the regional LLCs, subject to Commission review.”). The Commission also determined that the Master Agreements need not be filed formally with the Commission, *Second LNP Order*, 12 FCC Rcd at 12303, 12350-51, and rejected a request that the LNPA’s budget be subjected to an audit, *Telephone Number Portability*, 17 FCC Rcd 2578, 2593 (2002) (quoting *Second LNP Order*, 12 FCC Rcd at 12345) (noting also that “the specifics of NeuStar’s budget have been agreed upon in the context of contractual negotiations. . . .”).

⁵⁵ *See* NAPM Letter at 3-4.

⁵⁶ *Id.* at 4.

Indeed, it is exactly because the NAPM LLC *represents, and is comprised of, carriers* and – as the Commission has noted – *possesses the most expertise with respect to number portability*⁵⁷ that the Commission should continue to defer to the NAPM LLC’s decision to adopt Amendment 70. Telcordia’s bald assertion that “this situation in which NAPM LLC sought to transition from a per-transaction contract to a quasi-fixed price contract is exactly the type of situation in which a competitive bid would have been most appropriate”⁵⁸ simply does not justify Commission intervention.⁵⁹ Forcing the NAPM LLC to hold competitive bidding for NPAC database services in the middle of the Master Agreements’ current term, as Telcordia requests,⁶⁰ would override the commercially negotiated contract between the NAPM LLC and the LNPA and undermine the NAPM LLC’s management of the LNPA. Telcordia would have the Commission freeze in place the LNP contracts during their term. Under Telcordia’s reading, the NAPM LLC would be precluded from adopting amendments to its contracts during the term of those contracts even when an amendment serves the public interest, promotes

⁵⁷ *Second LNP Order*, 12 FCC Rcd at 12346.

⁵⁸ Telcordia Amendment 70 Petition at 29.

⁵⁹ The Commission should disregard Telcordia’s references to a recent memorandum from the President to “the Heads of Executive Departments and Agencies.” *See id.* at 3-5, 31 (quoting Memorandum for the Heads of Executive Departments and Agencies, Subject: Government Contracting (Mar. 4, 2009)). That memorandum is expressly limited to *executive* agencies, while the Commission, pursuant to 44 U.S.C. § 3502(5), constitutes an “independent regulatory agency.” *See id.* (listing the Commission as an “independent regulatory agency”).

⁶⁰ Telcordia also requests that the Commission “use the current pricing terms of Amendment 70 (other than those applicable to URI fields) to establish an interim rate for NeuStar, to apply until the new contracts are implemented and the current contracts are awarded,” Telcordia Amendment 70 Petition at 50, and “task NANC with completing [database] standards within three months, so that bidding can commence immediately once the Commission has fully considered [the] petition,” *id.* at 52. These requests are likewise inappropriate in light of the NAPM LLC’s reasonable decision that Amendment 70 promotes the industry’s best interests.

broadband deployment, and benefits the industry and consumers, as Amendments 70 and 72 clearly do.

In sum, the Master Agreements have been carefully negotiated and amended by the industry 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.

B. The Master Agreements Are Not Exclusive

Telcordia's contention that the Master Agreements are exclusive⁶¹ is also baseless. Notwithstanding that there is no regulatory obligation to have more than one LNPA in each region, the NAPM LLC has ensured that the Master Agreements remain non-exclusive. Article 28 of each regional Master Agreement explicitly provides that the LNPA is not granted "the exclusive right to provide NPAC Services."⁶² Moreover, Amendment 70 specifically removes the "triggering" provisions implemented in Amendment 57 that Telcordia claimed in its previous petition were anticompetitive.⁶³ In addition, Amendment 70: (1) preserves the legal and operational distinctness of the seven separate contracts for the seven United States Service Areas, such that non-centralized solutions are required and potential competition is preserved across the Service Areas; and (2) does not establish required transaction minimums and provides a transaction band

⁶¹ *Id.* at 33.

⁶² *See* Master Agreement, Art. 28.

⁶³ *Cf.* Amendment 70 and Amendment 57.

beneath which the price paid to Neustar is reduced, such that experimentation and potential migration to other vendors remains an option.⁶⁴ In other words, the Master Agreements afford the NAPM LLC sufficient flexibility to evaluate market conditions and introduce additional vendors at any time.

In addition to these aspects of the Master Agreements that seek to ensure non-exclusivity, the NAPM LLC has adopted procedures for the consideration of inquiries from potential vendors and established a standing advisory committee, the Vendor Proposal Advisory Committee (VPAC), to investigate and advise the entire NAPM LLC membership of all presentations and proposals from potential vendors.⁶⁵ The NAPM LLC has determined that “all material information required for a potential vendor to assemble and to present a meaningful presentation to compare to the current NPAC/SMS is available in the public domain without issuance of an RFP, RFI or similar solicitation by the NAPM [LLC].”⁶⁶ In other words, a formal RFP is unnecessary, as nothing prevents vendors from submitting new proposals, and the NAPM LLC has specific procedures in place to evaluate such proposals.

In fact, in recent years, the NAPM LLC has received multiple proposals for number portability administration services, including from Telcordia. Prior to commencing negotiations with Neustar in 2006, companies, including Telcordia, in 2005, made presentations to the NAPM LLC. Ultimately, however, the NAPM LLC sought to renegotiate its Master Agreements with Neustar resulting in Amendment 57. More

⁶⁴ See NAPM Letter at 11.

⁶⁵ *Id.*

⁶⁶ *Id.*

recently, Telcordia identified three additional NPAC models: “(1) the Regional Model, with Telcordia acting as the sole NPAC administrator in one or more separate United States Service Areas (referred to as Regions); (2) the Primary-Standby Administrator Model, which is essentially a variation on the Regional Model, with Telcordia acting as the Primary Administrator in one or more Regions and the existing NPAC Administrator or another administrator acting as the Standby Administrator in those Regions; and (3) the Multi-Peering Administrator Model.”⁶⁷ Although none of these proposals has been adopted, one of these proposals is currently under review by the NANC’s LNPA Working Group for technical review. The NAPM LLC, cognizant of other vendors’ proposals, determined that it was in the industry’s best interests to adopt Amendment 70. Thus, Telcordia has had every opportunity to submit a proposal for the NAPM LLC to consider.⁶⁸

Overall, Telcordia’s continuing failure to convince its carrier customers to adopt its proposals does not render the Master Agreements “exclusive” or “anticompetitive.” The NAPM LLC has never discouraged Telcordia from continuing to submit improved

⁶⁷ Letter from Melvin Clay, Co-Chair, NAPM LLC, and Timothy Decker, Co-Chair, NAPM LLC, to Joel Zamlong, Telcordia Technologies, Inc. at 2 (Nov. 20, 2008).

⁶⁸ The details of Telcordia’s discussions with the NAPM LLC regarding its proposed NPAC models remain confidential. Therefore, without additional information regarding the nature of those proposals, any suggestion that their rejection resulted from anti-competitive motives is entirely speculative. It is also worth noting that notwithstanding its own confidential discussions with the NAPM LLC, Telcordia suggests throughout its petition that the NAPM LLC and Neustar acted nefariously by keeping confidential the details of their negotiations surrounding Amendment 70. *See, e.g.*, Telcordia Amendment 70 Petition at 18 (“On January 28, 2009, NAPM and NeuStar signed Amendment 70, their fourth no-bid deal, again negotiated behind closed doors.”). In light of the fact that private negotiations between private parties almost always occur “behind closed doors,” this baseless attack serves only to highlight the weakness of Telcordia’s claims.

proposals,⁶⁹ and if Telcordia or any other vendor did offer a solution beneficial to the industry, nothing in the Master Agreements would prevent the NAPM LLC from implementing that solution. Telcordia's efforts now to characterize the Master Agreements as "anti-competitive" and "exclusive" merely represent a last-ditch attempt by a disgruntled vendor to use the regulatory process to force its carrier customers to adopt its services after it has not succeeded in the marketplace. Accordingly, the Commission should not now interfere with the NAPM LLC's reasonable decision to adopt Amendments 70 and 72.

C. Amendment 70 Does Not Violate the Anti-Trust Laws

The Commission should also reject Telcordia's contention that Amendment 70 violates the antitrust laws.⁷⁰ Neither the original LLCs' well-considered decisions to award the LNP administration contracts to Neustar, nor the NAPM's subsequent decision to modify the pricing mechanism in Amendment 70, 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. Amendment 70 is none of these.

⁶⁹ NAPM Letter at 12.

⁷⁰ See Telcordia Amendment 70 Petition at 35-37. Fundamentally, Telcordia's complaint is not that the competitive process has been harmed by Amendment 70, but that Telcordia has been harmed by its failure to win all or part of the NAPM LLC's business. Harm to competitor, however, is not harm to competition. See, e.g., *Atlantic Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 338 (1990).

Similarly, Neustar is not a monopolist within the meaning of the antitrust laws, or in any reasonable commercial sense. As explained *supra*, Amendment 70 resulted from arm's-length negotiations between Neustar and an entity whose members are some of the largest purchasers of database management services in the world. As a very large buyer, the NAPM LLC has been able to obtain concessions from Neustar throughout the term of the Master Agreements, including the price discounts included in Amendment 70. As such, Neustar has neither been “maintaining a monopoly” nor exerting any other commercial leverage to “cajol[e]” the NAPM LLC to accept an “exclusive contract” against its will.⁷¹

Winning the NPAC database contracts hardly constitutes a willful “bad act” of monopolization. Indeed, while the antitrust laws exist to protect consumers and buyers, they do not require large buyers such as the NAPM LLC to “spread their business around” or otherwise prohibit the NAPM LLC from selecting a single vendor of its choice. In any 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 market⁷² and geographic market⁷³ where competition is harmed. Nowhere in its petition

⁷¹ See Telcordia Amendment 70 Petition at 36-37.

⁷² 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*

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. Thus, rather than define a relevant market, Telcordia's petition implicitly argues that the Master Agreements are, standing alone, a relevant market.⁷⁴ Courts generally reject markets defined by the purchases of a single buyer.⁷⁵

Nemours & Co., 351 U.S. 377, 395 (1956). In this case, if the NAPM LLC 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. In addition, there are numerous other providers of database management services whose offerings must also be included with those of Neustar and Telcordia. Among those providers are Oracle, IBM, Computer Sciences Corp., Syniverse, Hewlett-Packard, BearingPoint, Accenture, TNS, and Cap Gemini.

⁷³ 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," *Pa. 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, the NAPM LLC could rationally consider data management firms located anywhere in the United States, and probably the world.

⁷⁴ Without explanation, Telcordia asserts that Neustar "has 100% of the market . . ." Telcordia Amendment 70 Petition at 36. Presumably Telcordia means that Neustar won the contract at issue, but it offers no explanation as to how that contract could constitute a relevant antitrust market.

⁷⁵ *Tampa Elec. Co. v. Nashville Coal Co.*, 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 sellers of those competing offerings currently have as their customers"); *Tanaka v. Univ. 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").

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

Telcordia cites *LePage's Inc. v. 3M*,⁷⁶ for the proposition that “exclusive dealing” by a monopolist can violate Section 2.⁷⁷ In that case, 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.⁷⁸ In stark contrast, Neustar’s national share of data management services is small, and Telcordia is complaining about its loss of a single contract—one which it had an opportunity to win.⁷⁹

3. The Contract Is Lawful And Is Not Anticompetitive

Telcordia also claims that, under the terms of Amendment 70, it would be difficult for Telcordia to induce the NAPM LLC to transfer some of its business prior to 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 process. Neustar had no market power or other leverage over the NAPM LLC when it won the contract, and the NAPM LLC has

⁷⁶ 324 F.3d 141 (3d Cir. 2003).

⁷⁷ Telcordia Amendment 70 Petition at 35.

⁷⁸ *LePage's*, 324 F.3d at 154-58. 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.

⁷⁹ Telcordia’s reliance on *United States v. Visa U.S.A., Inc., et al.*, 344 F.3d 229 (2d Cir. 2003), is also misplaced. See Telcordia Amendment 70 Petition at 36. That case involved a horizontal agreement among competing banks that none of the banks would issue American Express or 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.

no incentive to exclude Telcordia or any other company from the data management services market, or otherwise do commercial harm to any of them. To the contrary, the NAPM LLC has made every effort to ensure that the Master Agreements are *not* exclusive to protect the interests of the industry and its consumers.

D. Amendment 70 Does Not Violate the Competition in Contracting Act

Telcordia further contends that the NAPM LLC’s failure to obtain competitive bids prior to entering into Amendment 70 violates the Competition in Contracting Act (CICA).⁸⁰ This argument is meritless. CICA requires that “an *executive agency* in conducting a procurement for property or services shall obtain full and open competition through the use of competitive procedures.”⁸¹ CICA does not apply here for three reasons: (1) the NAPM LLC is not an “executive agency;” (2) the NAPM LLC is not engaged in a government “procurement;” and (3) a contract modification like Amendment 70 does not come within the ambit of CICA.

First, the NAPM LLC is not an executive agency but rather is an independent association of private companies that happen to be regulated by the FCC. This situation is readily distinguishable from the one addressed in *Motor Coach Indus., Inc. v. Dole*,⁸² which Telcordia cites for the proposition that the NAPM LLC is a “public instrumentality” of the Commission that must abide by CICA.⁸³ In that case, the Fourth Circuit held that a trust established by the Federal Aviation Administration (FAA) to fund

⁸⁰ See Telcordia Amendment 70 Petition at 38.

⁸¹ See 41 U.S.C. § 253(a)(1)(A) (emphasis added).

⁸² 725 F.2d 958 (4th Cir. 1982)

⁸³ Telcordia Amendment 70 Petition at 38.

bus transportation to Dulles Airport was public in character such that CICA applied to all procurements funded by the trust. The Fourth Circuit described the relationship between the FAA and the trust as follows:

The Trust was established at the urging of the FAA to accomplish an objective it had long sought—improved public access to Dulles Airport. The documents governing the Trust not only made the FAA the sole beneficiary, but gave the agency a prominent, if not exclusive, role in the Trust’s administration. The FAA established the airlines’ contribution formula, monitored collections with its own staff, exercised final approval power over disbursements, and participated in every phase of the decision to award Eagle the bus contract.⁸⁴

Based on this relationship, the court found that the trust was “public in character.”⁸⁵ That is, “the FAA’s hand was visible in all critical aspects of the Trust—its creation, its funding, and its administration.”⁸⁶ Accordingly, the Fourth Circuit concluded that “the trust arrangement both undermined the integrity of the congressional appropriation process and ignored substantive duties under the procurement statutes,” such that it constituted an “end-run around normal appropriation channels” to “divert funds from their intended destination – the United States Treasury.”⁸⁷

The Commission’s relationship to the NAPM LLC bears no resemblance to the relationship between the FAA and the trust in *Motor Coach*. That is, other than generally overseeing the functions of the NAPM LLC, the Commission is not the beneficiary of the organization’s funds, it plays no role in administering those funds, and it had no hand in

⁸⁴ *Motor Coach*, 725 F.2d at 965.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* at 968.

administering or executing the Master Agreements. As explained *supra*, the NAPM LLC was established by the industry as a private, independent entity with expertise in number portability to administer the NPAC database. There exists no indication that it was intended to provide an “end-run around normal appropriations channels” or divert funds from the United States Treasury. Accordingly, it is not subject to the requirements of CICA.⁸⁸

Further, even if CICA applies to the NAPM LLC, Amendment 70 does not constitute a “procurement for goods and services.”⁸⁹ “[I]t is well settled, that federal procurement laws and regulations, such as CICA . . . apply only when an agency . . . acts as a commercial purchaser of goods and services.”⁹⁰ Though the term “procurement” is not defined in the CICA, the D.C. Circuit distinguished procurement from the selection of an agent to perform a particular task.⁹¹ The court found that procurement describes the expenditure of public funds to purchase property or services that benefit the government.⁹² As such, courts have found that the conferral of agency status, such as the selection of a bonding authority to carry out a financing program on behalf of an agency or an agency’s appointment of a bank to serve as its financial agent, does not constitute

⁸⁸ See also *Rapides Reg’l Med. Ctr. v. Secretary of the Dep’t of Veterans Affairs*, 974 F.2d 565, 572-73 (5th Cir. 1992) (distinguishing *Motor Coach* because “[u]nlike the FAA trust, the circumstances [in the case did] not suggest any attempt to evade statutory purchase requirements”).

⁸⁹ See 41 U.S.C. § 253(a)(1).

⁹⁰ *Grigsby Brandford & Co., Inc. v. United States*, 869 F. Supp. 984, 997 (D.D.C. 1994) (citations omitted).

⁹¹ *Saratoga Development Corp. v. United States*, 21 F.3d 445, 452-53 (D.C. Cir. 1994); see also *Grigsby Brandford & Co., Inc.*, 869 F. Supp. at 998 (finding that the Department of Education’s selection of an administrator for a government program does not constitute a procurement and therefore CICA does not apply).

⁹² *Saratoga Development Corp.*, 21 F.3d at 453.

procurement.⁹³ Here, Amendment 70, at most, confers additional authority to Neustar to carry out its existing obligations to provision numbering services to private carriers. It does not result in the expenditure of any public funds for the services that benefit the government.

Finally, even if Amendment 70 were considered a procurement and CICA did apply, Amendment 70 does not qualify as a modification necessitating a new bidding process. As the Federal Circuit has explained, “CICA . . . does not prevent modification of a contract by requiring a new bid procedure for every change. Rather only modifications outside the scope of the original competed contract fall under the statutory competition requirement.”⁹⁴ Although “CICA sets forth no standard for determining when modification of an existing contract requires a new competition or falls within the scope of the original competitive procurement,” the Federal Circuit has considered “whether Government modifications changed the contract enough to circumvent the statutory requirement of competition.”⁹⁵

Specifically, the court “examines whether the contract as modified materially departs from the scope of the original procurement.”⁹⁶ “The analysis focuses on the scope of the entire original procurement in comparison to the scope of the contract as modified,” and “[t]hus a broad original competition may validate a broader range of later

⁹³ *Grigsby Brandford & Co., Inc.*, 869 F. Supp. at 997 (citing *United States v. Citizens & Southern Nat’l Bank*, 889 F.2d 1067, 1069 (Fed. Cir. 1989)).

⁹⁴ *AT&T Commc’ns, Inc. v. Wiltel, Inc.*, 1 F.3d 1201, 1205 (Fed. Cir. 1993); *see also Northrop Grumman Corp. v. United States*, 50 Fed. Cl. 443, 464-65 (2001).

⁹⁵ *Wiltel*, 1 F.3d at 1205.

⁹⁶ *Id.*

modifications without further bid procedures.”⁹⁷ In other words, a modification is outside the scope of the procurement only if the original procurement did not anticipate changes in the type of service.⁹⁸ Technological upgrades anticipated by the original procurement do not require adherence to CICA procedures when implemented.⁹⁹

Here, the changes implemented in Amendment 70 plainly fall within the scope of the original procurement. That is, Amendment 70 does not change the scope of performance – *i.e.*, administration of the NPAC database – or otherwise alter Neustar’s position as the NPAC database administrator. Instead, as explained *supra*, the amendment implements a new pricing mechanism for the same LNP services in response to increasing costs to the carriers, thus representing an evolution of the Master Agreements to accommodate industry developments. Similarly, addition of the URI parameters in the NPAC database¹⁰⁰ constitutes a technical upgrade clearly contemplated in the original procurement. As the Commission has explained, Congress’s intent from the beginning with respect to number portability has been that it should “be a ‘dynamic concept’ that accommodates [technological] changes.”¹⁰¹ Accordingly, Amendment 70

⁹⁷ *Id.*

⁹⁸ *Northrop Grumman Corp. v. United States*, 50 Fed. Cl. at 466.

⁹⁹ *Id.* (“Changes consisting of technological upgrades have been repeatedly held to be within the scope of the original solicitation where the solicitation included language that expressly anticipated and encouraged utilization of such advances.”).

¹⁰⁰ As explained *supra*, Amendment 72 – not Amendment 70 – provides for implementation of the URI fields. *See also infra* at Section V.

¹⁰¹ *Telephone Number Portability Order*, 22 FCC Rcd 19531, 19544 (2007) (citing *Intermodal Number Portability Order*, 18 FCC Rcd 23697, 23708 (2003) (discussing the reasonableness of differences in porting obligations due to differences in the technological feasibility of different types of porting)).

does not “materially depart[] from the scope of the original procurement” or “circumvent the statutory requirement of competition.”

In sum, Telcordia’s claim that the NAPM LLC has violated CICA in adopting Amendment 70 is entirely unsupported and contrary to prevailing case law. CICA simply does not apply to the NAPM LLC’s adoption of Amendment 70. In any event, as explained *supra*, potential competitors to Neustar, including Telcordia, have already been provided with ample opportunity to submit proposals for number portability administration. The NAPM LLC, as the industry’s representative, has reasonably determined that Neustar’s contract and Amendment 70 offer the greatest benefit to the carriers and their customers.

E. Amendment 70’s Severability Clause Is Lawful

In a desperate attempt to “have its cake and eat it too,” Telcordia argues that the severability clause in Amendment 70 is unlawful. That clause mandates that if any provision of the amendment is declared invalid or unlawful, the remaining provisions become null and void, and the terms of the Master Agreements in effect immediately prior to Amendment 70 (*i.e.*, the terms under Amendment 57), become effective again.¹⁰² According to Telcordia, the clause “directly challenges and frustrates all oversight by tying together lawful and unlawful provisions.”¹⁰³ As such, Telcordia claims, after spending 42 pages arguing that Amendment 70 must be struck down, that the Commission must nevertheless uphold the pricing provisions favorable to the industry in the amendment. In other words, Telcordia is not content with requesting that the

¹⁰² Amendment 70 § 15.2.

¹⁰³ Telcordia Amendment 70 Petition at 44.

Commission abrogate Amendment 70 – it also wants the Commission to cherry-pick those provisions that were Neustar’s concessions to the industry and declare them enforceable as a matter of law while simultaneously negating the concessions that industry made in return – notwithstanding the parties’ agreement to the contrary.

Severability clauses like the one in Section 15.2 are commonplace in business contracts. This is because such clauses serve the important business purpose of providing assurance to each party to a bargained-for agreement that if any provision is declared unenforceable, it will not be stuck with a one-sided contract in the other party’s favor. Without such clauses, parties’ willingness to make concessions throughout the course of bargaining would be chilled.

Not surprisingly, Telcordia cites no authority for its contention that a severability clause in this context “create[s] incentives for the contracting parties to violate the law” or otherwise undermines Commission oversight.¹⁰⁴ Indeed, the contention that Neustar somehow included this provision so that it could use favorable pricing provisions to force the NAPM LLC into an unlawful agreement maintaining Neustar’s monopoly is preposterous. Accordingly, there exists no reason for the Commission to declare the severability clause in Amendment 70 void and unenforceable.

F. Commission Precedent Forecloses Intervention in These Circumstances

Pursuant to Commission precedent, parties such as Telcordia that seek Commission regulatory intervention to modify commercially-negotiated contracts like

¹⁰⁴ See *id.* at 44-45.

Amendment 70 must meet a “strict” standard.¹⁰⁵ That is, they must demonstrate not only, as a threshold matter, that the contracts “are ‘unlawful’ according to the terms of the governing statute,”¹⁰⁶ but they also must meet a “much higher” standard¹⁰⁷ – that is, that there is “a compelling public interest” in contract modification.¹⁰⁸ In other words, a party must demonstrate significant “harm to the public interest,”¹⁰⁹ not merely “private injury.”¹¹⁰ Telcordia has utterly failed to show that Commission intervention is justified in these circumstances.

In *IDB*, the Commission refused to intervene in a situation strikingly similar to the one presented here. *IDB* submitted a complaint against COMSAT for its allegedly unreasonable refusal to reduce certain contractual satellite service rates. In evaluating the complaint, the Commission described the “heavy burden”¹¹¹ assumed by a party attempting to persuade the Commission to modify a commercial contract:

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

¹⁰⁵ *ACC Long Distance Corp. v. Yankee Microwave, Inc.*, 10 FCC Rcd 654, 657 (1995) (*ACC*).

¹⁰⁶ *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 Telecomunicaciones Internacionales de Argentina Telintar, S.A.*, 11 FCC Rcd 13893 (1996) (voiding provision in operating agreement prohibiting resale in violation of Section 201 of the Act).

¹⁰⁷ *IDB Mobile Communications, Inc. v. Comsat Corp.*, 16 FCC Rcd 11474, 11480 (2001) (“*IDB*”).

¹⁰⁸ *Ryder Communications, Inc. v. AT&T*, 18 FCC Rcd 13603, 13614 (2003) (*Ryder*).

¹⁰⁹ *IDB*, 16 FCC Rcd at 11480.

¹¹⁰ *ACC*, 10 FCC Rcd at 657.

¹¹¹ *Id.*

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.¹¹²

The Commission then explained:

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.*¹¹³

Accordingly, the Commission refused to modify the contract.

Similarly, Neustar’s decision to address the NAPM LLC’s concerns regarding increasing costs by implementing a fixed-price pricing mechanism during the duration of the contract 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

¹¹² *IDB*, 16 FCC Rcd at 11480-81 (emphasis in original).

¹¹³ *Id.* at 11483, 11485 (emphasis added) (citations omitted).

contractual term is a reasonable, accepted commercial practice, both inside and outside of the telecommunications industry.”¹¹⁴

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.¹¹⁵ As explained *supra*, the Master Agreements continue to preserve the NAPM LLC’s ability to introduce additional vendors or technologies. Accordingly, Telcordia will continue to have the opportunity, as it has done in the past, to submit proposals for number portability administration.

Overall, Telcordia has completely failed to establish either that Amendment 70 is “unlawful” or that it results in significant “harm to the public interest.” Amendment 70 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 the cost of local number portability. As such, Telcordia falls far short of articulating a viable legal rationale to justify the Commission taking the radical step of intervening in the smoothly functioning NAPM LLC contracting process.¹¹⁶

¹¹⁴ *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).

¹¹⁵ *ACC*, 10 FCC Rcd at 657.

¹¹⁶ Although Telcordia argues that the Commission has authority to strike down Amendment 70 under 47 U.S.C. § 201, *see* Telcordia Amendment 70 Petition at 46-48, at no point in its petition does it explain how the amendment violates this provision. In any event, regardless of whether Section 201 applies to number portability administration – which it does not – as explained *supra*, Telcordia has failed to demonstrate how Amendment 70’s price reductions are unjust or unreasonable.

V. **TELCORDIA HAS FAILED TO SATISFY ITS HEAVY BURDEN THAT A PRELIMINARY INJUNCTION ON AMENDMENT 72 IS APPROPRIATE**

Although, as explained *supra*, Amendment 70 did not implement the new URI parameters, Telcordia's petition requested that "the Commission should immediately direct NAPM LLC and Neustar not to take any steps to implement the URI fields described in Amendment 70 . . . in the NPAC database pending further review by the Commission."¹¹⁷ Telcordia then responded to the adoption of Amendment 72 by filing a "Renewed Request for a Standstill Order" on May 22, 2009, in which it asked the Commission to "prevent[] Neustar from implementing any statements of work regarding URI Change Orders"¹¹⁸ Telcordia also filed a formal dispute with the NANC.¹¹⁹ In these filings, Telcordia claims that the Change Orders are "procedurally defective" in that the NANC or the Commission must make a formal and explicit finding that "information is necessary to route telephone calls" in order for data to be included in the NPAC.¹²⁰ Telcordia further argues that even if the LNPA Selection Working Group

¹¹⁷ *Id.* at 51.

¹¹⁸ See Letter from John T. Nakahata, Wiltshire & Grannis LLP, Counsel to Telcordia, to Julie Veach, Acting Chief, Wireline Competition Bureau, WC Docket No. 07-149 at 2 (filed May 22, 2009) (Renewed Request for Standstill); see also Letter from John T. Nakahata, Harris, Wiltshire & Grannis LLP, Counsel to Telcordia, to Julie Veach, Acting Chief, Wireline Competition Bureau, WC Docket No. 07-149 (filed May 18, 2009) (requesting that the Bureau institute an "Interim Standstill" and direct the NAPM LLC to refrain from taking action to implement the addition of the URI fields to the NPAC).

¹¹⁹ Letter from John T. Nakahata, Wiltshire & Grannis LLP, Counsel to Telcordia to Thomas Koutsy, Chairman, North American Numbering Council at 1 (May 26, 2009) In the following section, Neustar responds to the arguments raised by Telcordia in both filings.

¹²⁰ *Id.*

and NAPM LLC possess such authority, the Change Orders violate 47 C.F.R. § 52.25(f) because the new fields are not “necessary to route telephone calls.”¹²¹

As Neustar demonstrated in its recent filing as part of the ongoing NANC Dispute Resolution process, these arguments are completely unfounded.¹²² In fact, the request to reverse the decision to add these data parameters contradicts more than a decade of precedent regarding the proper procedure for updating the NPAC database. Moreover, the Change Orders are consistent with Section 52.25(f). Telcordia’s narrow reading of the terms “telephone call” and “necessary” is simply incompatible with state and federal case law, Commission practice, and Congressional intent.

In the instant request for standstill order, Telcordia is clearly seeking regulatory protection for the IP-based routing database it is deploying on behalf of the Country Code 1 ENUM LLC. Its goal, simply stated, is to prevent IP-routing information from being included in the NPAC database in order to eliminate the NPAC as a competitive option for carriers seeking to route traffic using Internet-protocol technology. Telcordia’s efforts fly in the face of the Commission’s objective in the *Interconnected VoIP LNP Order* “to ensure that consumers retain [their LNP] benefit as technology evolves [because] [it] continue[s] to believe that Congress’s intent is that number portability be a ‘dynamic concept’ that accommodates such changes.”¹²³ Accordingly, the Commission

¹²¹ *Id.*

¹²² See Letter from Thomas J. Navin, Wiley Rein LLP, Counsel to NeuStar, Inc., to the North American Numbering Counsel, Opposition to Telcordia’s Request that NANC Resolve Dispute Concerning Necessity of Adding Certain URI Codes for the Completion of Telephone Calls (Aug. 14, 2009) attached as Exhibit 1.

¹²³ *Telephone Number Portability Order*, 22 FCC Rcd at 19544 ¶ 23 (citing *Intermodal Number Portability Order*, 18 FCC Rcd at 23708 ¶ 27).

should reject this attempt to freeze the NPAC database in time and prevent evolution of the LNP database to reflect technological changes.

In making the requests for a preliminary injunction,¹²⁴ Telcordia fails to satisfy any of the four prongs required to obtain equitable relief from the Commission. The Commission has recognized its authority to “impose interim injunctive relief.”¹²⁵ In considering any request for equitable relief, such as a preliminary injunction, the Commission applies the four criteria articulated in *Virginia Petroleum Jobbers Ass’n v. Federal Power Co.*¹²⁶: “(1) likelihood of success on the merits; (2) the threat of irreparable harm absent the grant of preliminary relief; (3) the degree of injury to other parties if relief is granted; and (4) that the issuance of the order will further the public interest.”¹²⁷ Only when the factors are “heavily tilted in the movant’s favor” is such extraordinary relief appropriate.¹²⁸ Thus, the Commission has denied such extraordinary relief where one or more of the factors has been absent.¹²⁹ Here, Telcordia satisfies none of the four prongs, and therefore its request should be denied.

¹²⁴ Although Telcordia styles its request as a request for “standstill,” the scope of action that it seeks is the same as a request for a preliminary injunction. It thus must meet the same exacting standard for its request.

¹²⁵ *Formal Complaint of Free Press & Public Knowledge*, 23 FCC Rcd 13028, 13060 n.247 (2008) (collecting cases).

¹²⁶ 259 F.2d 921 (D.C. Cir. 1958).

¹²⁷ *AT&T Corp.*, 13 FCC Rcd 14508, 14515 (1998).

¹²⁸ *Implementation of Video Description of Video Programming*, 17 FCC Rcd 6175, 6176-78 (2002).

¹²⁹ See *id.* (denying a stay in part because the party had failed to show irreparable harm); *Telephone Number Portability*, 18 FCC Rcd 24664 (2003) (denying stay of Commission's order where the factors were absent); *Liberty Productions*, 16 FCC Rcd 18966, 18970 (2001) (requiring a “convincing showing” on at least one of the *Jobbers* factors for stay of Commission’s order and denying a stay because none of the factors had been met).

In the end, Telcordia's request fails to offer any compelling reason for the Commission to take the unprecedented step of overturning the reasonable decision to include the Voice, SMS, and MMS URI parameters in the already existing Optional Data field of the NPAC database. The Commission should reject Telcordia's thinly veiled attempt to gain competitive advantage for itself at the expense of the efforts to advance the country's communications infrastructure to meet the needs of the broadband world. Accordingly, the Commission should deny Telcordia's petition to forestall the necessary evolution of the NPAC because Telcordia's effort is blatantly against the public interest. Instead, the Commission should support the actions to promote options for efficient IP-routing which, in turn, will spur demand for IP networks and applications and foster broadband deployment.

A. Telcordia Has Failed to Demonstrate a Likelihood of Success on the Merits

Neustar's recent filing at the NANC, attached as Exhibit 1, demonstrates in detail how Telcordia has failed to demonstrate a likelihood of success on the merits with respect to its URI claims. Because Telcordia has failed to satisfy this first prong of the *Virginia Petroleum Jobbers* test, its standstill request must be denied.

B. Telcordia Fails to Demonstrate that It Will Suffer Any Harm—Let Alone Irreparable Harm—Absent Injunctive Relief

Telcordia claims that it will be injured in two ways if the Commission denies its request for a preliminary injunction. First, it claims that "[i]f a customer wants to use the URI data, local system vendors like Telcordia will have to modify its portion of the local

systems infrastructure used by carriers.”¹³⁰ Second, it claims that in the absence of a stay Neustar will be able to “gain business that would otherwise have gone to Telcordia, or other competitive ENUM services providers.”¹³¹ Yet, even if these claims are true, both fall far short of establishing that Telcordia will suffer irreparable injury if its request is denied.

As explained *supra*, the Commission has adopted the *Virginia Petroleum Jobbers* test for evaluating the propriety of injunctive relief.¹³² In describing the “irreparable harm” prong of that test, the D.C. Circuit explained that the moving party has the “burden of showing sufficient irreparable harm to command a preliminary injunction from the district court,”¹³³ and that to satisfy that burden, the moving party must demonstrate that the irreparable injury is “likely” to occur.¹³⁴

Here, Telcordia fails to establish a likelihood that it will suffer *any injury at all*. With respect to its claim that it must incur costs to upgrade its network simply because of the scheduled introduction of three URI data parameters, the claim is inaccurate. Implementation of the new parameters in the NPAC database imposes no obligation on Telcordia to upgrade its own network to support them, and thus Telcordia incurs no costs merely because the new parameters are introduced. Indeed, there is no requirement on any service provider to support the three new parameters.

¹³⁰ Letter from John T. Nakahata, Wiltshire & Grannis LLP, Counsel to Telcordia, to Marlene Dortch, Secretary, Federal Communications Commission, WCB Docket No. 07-149, at 4 (June 24, 2009) (Telcordia *Ex Parte*).

¹³¹ *Id.*

¹³² See *supra* at n.128 (citing *AT&T Corp.*, 13 FCC Rcd at 14515).

¹³³ *Sea Containers Ltd. v. Stena AB*, 890 F.2d 1205, 1210-11 (D.C. Cir.1989).

¹³⁴ *Nat’l Wildlife Fed’n v. Burford*, 835 F.2d 305, 325 (D.C. Cir. 1987).

Moreover, to the extent Telcordia claims that its contracts with carriers require it to update its systems and incur costs, this claim is speculative at best. As noted above, Telcordia's service provider customers are under no obligation to use these optional parameters or to request that Telcordia upgrade its system to accommodate them. The three new parameters are expressly optional to use – there is no requirement on any service provider to use or support them. To the extent that one of its customers were to make such a request and Telcordia were to incur costs from implementing changes to its system, Telcordia admits that “[t]hese costs will then be billed by the vendors to their carrier customers.”¹³⁵ Thus, even if incurring such costs did constitute an “injury,” that “injury” is plainly not “irreparable.”¹³⁶

To the extent Telcordia argues that the carriers will suffer irreparable harm if they make the decision to exercise the option to implement these parameters, this claim has no bearing on the “irreparable harm” inquiry whatsoever. Even if those carriers would suffer such injury – which they would not – Telcordia still must demonstrate that it, as the moving party, would suffer irreparable harm.¹³⁷ Telcordia cannot stand in the shoes of other parties – injured or not – in order to obtain injunctive relief.¹³⁸

In its filings, Telcordia makes no showing of the likelihood that it will incur costs, the magnitude of the costs it would incur, or any showing that it would be unable to bill

¹³⁵ Renewed Request for Standstill at 4.

¹³⁶ See *Va. Petroleum Jobbers*, 259 F.2d at 925.

¹³⁷ See *Sea Containers Ltd.*, 890 F.2d at 1208 (“[P]reliminary relief is to be granted only if the *moving party* establishes that . . . it will suffer irreparable harm if the injunction is not granted; . . .” (emphases added)).

¹³⁸ See *CityFed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 747 (D.C. Cir. 1995) (“[W]e require the *moving party* to demonstrate at least some injury.” (emphasis added) (internal quotation omitted)).

the costs of any changes to its carrier customers. Moreover, even were such a scenario to unfold, the providers can request Neustar to populate the URI parameter data on their behalf during the pendency of this dispute. Thus, Telcordia's fails to meet its required burden to demonstrate a likelihood that it will suffer an irreparable injury.

Similarly, Telcordia's claim that it will suffer competitive harm if Neustar were to implement the new data parameters is entirely speculative. Indeed, Telcordia has provided no evidence that it will immediately begin losing customers during the pendency of the Commission proceedings. Baldly asserting that "*if* customers migrate to Neustar services based on these unlawful fields, they *may* never return to Telcordia"¹³⁹ is simply not enough. At best, implementing the new parameters puts Neustar in a position to compete against the Telcordia ENUM database that it is deploying for the Country Code 1 ENUM LLC. But lost business opportunities or market share may only constitute irreparable harm where, unlike here, "compliance with [the law] would force [the moving party] out of business, or fundamentally change the nature of their opposition."¹⁴⁰ Overall, Telcordia's alleged injury is not of "such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm."¹⁴¹ Because the Petitioner has failed to provide "proof indicating that the harm is certain to occur in the near future," it cannot satisfy the court's irreparable harm standard.¹⁴²

¹³⁹ Telcordia *Ex Parte* at 4 (emphasis added).

¹⁴⁰ *Freedom Holdings, Inc. v. Spitzer*, 408 F.3d 112, 115 (2d Cir. 2005).

¹⁴¹ *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006) (quoting *Wisc. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (per curiam)) (emphasis in original) (internal quotations omitted).

¹⁴² See *Wisc. Gas Co.*, 758 F.2d at 674.

C. The Telecommunications Industry Will Be Harmed If Injunctive Relief Is Granted to Telcordia

The third prong of the *Virginia Petroleum Jobbers* test requires an evaluation of the harm to other parties if the standstill order is issued. The actual harm to third parties comes from granting the standstill request. As noted above, these IP data parameters are expressly optional – there is no requirement for any carrier to use or support them. However, providers that would like to use the Amendment 72 parameters – and their customers – will be harmed by delaying the efficiency and quality benefits that the IP routing enabled by these parameters provides. In the instant request for a standstill, Telcordia is clearly seeking regulatory protection for the ENUM routing database it is deploying for the Country Code 1 ENUM LLC. If the Commission were to grant Telcordia’s request, it would reduce the number of IP-routing options available to service providers. Finally, Neustar will suffer competitive harm if the NPAC is the subject of a standstill order while Telcordia moves forward with its CC1 ENUM LLC database. Because a preliminary injunction would result in substantial harm to third parties, Telcordia’s request must be denied.

D. Granting Telcordia’s Request for Injunctive Relief Will Be Contrary to the Public Interest

Telcordia’s self-serving plea for preliminary injunctive relief is nothing more than an attempt to gain competitive advantage for one company at the expense of the Commission’s efforts to evolve the Nation’s communications infrastructure in a broadband world. Telcordia’s petition fails to show any public interest benefits from granting its request for preliminary injunctive relief. As the Commission recently recognized, broadband Internet access in combination with small mobile devices is

transforming the way we communicate, educate, work, and live.¹⁴³ Touch-screen mobile devices and interconnected VoIP services are becoming routine. In spite of these network innovations, Telcordia's underlying complaint here is that the LNPA database should only include fields that facilitate legacy circuit-switched telephone calls. Such an approach to LNPA database management is directly contrary to the Commission's efforts to address the growing needs of the Nation's "telephone" consumers. As the Commission explicitly recognized, "as technology evolves[,] we continue to believe that Congress's intent is that number portability be a 'dynamic concept' that accommodates such changes."¹⁴⁴ Accordingly, the Commission should seek to promote efficient IP-routing which will spur demand for IP networks and applications, and promote broadband deployment. It should reject Telcordia's effort to forestall the necessary evolution of the LNPA database because it is so blatantly against the public interest.

VI. CONCLUSION

Telcordia has shown no legal or policy reason for the Commission to intervene in the contractual relationship that exists between Neustar and the NAPM to abrogate amendments that save carriers and their customers tens of millions of dollars each year while delivering enhanced functionality. Amendment 70 was lawfully negotiated at arm's length between the parties to address industry concerns about the rising costs of local number portability under the previous transaction-based pricing model and the need

¹⁴³ Bringing Broadband to Rural America, Report on a Rural Broadband Strategy, Michael J. Copps, Acting Chairman, FCC (May, 22, 2009) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-291012A1.pdf.

¹⁴⁴ *Telephone Number Portability Order*, 22 FCC Rcd at 19544 ¶ 23 (citing *Intermodal Number Portability Order*, 18 FCC Rcd at 23708 ¶ 27 (discussing the reasonableness of differences in porting obligations due to differences in the technological feasibility of different types of porting)).

for technological evolution of the NPAC database. Telcordia has provided no antitrust or other statutory rationale sufficient to justify the extraordinary relief that it seeks.

Telcordia has utterly failed to explain why the Commission should reverse its decade-old oversight policy by intervening in a commercial relationship that benefits the industry and consumers.

Telcordia has also failed to demonstrate that a preliminary injunction should be put into place to prevent Neustar and the industry from enabling new parameters in the NPAC database that will make IP to IP communications easier to route between the networks of different providers. Such IP routing information will promote efficient, high quality IP communications, lead to new IP applications, and spur the demand for broadband. For the reasons stated above, the Commission should dismiss promptly Telcordia's Petitions.

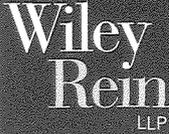
Respectfully submitted,

By: 

Gerald J. Kovach
Jordan B. Goldstein
Richard L. Fruchterman
NeuStar, Inc.
2000 M Street, N.W.
Washington, D.C. 20036
(202) 533-2910

September 8, 2009

EXHIBIT 1



1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

August 14, 2009

Thomas J. Navin
202.719.7487
tnavin@wileyrein.com

VIA OVERNIGHT MAIL

Honorable Betty Ann Kane
Chairman
District of Columbia Public Service Commission
1333 H Street, N.W., West Tower 7th Floor
Washington, DC 20005

Don Gray
Telecommunications Specialist
Nebraska Public Service Commission
1200 N Street
Lincoln, NE 68508

Thomas M. Koutsky
Chairman, North American Numbering Council
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Opposition to Telcordia's Request that NANC Resolve Dispute Concerning Necessity of Adding Certain URI Codes for the Completion of Telephone Calls

Dear Chairman Kane, Mr. Gray, and Chairman Koutsky:

In 2008, as it had done hundreds of times over the previous decade, the North American Numbering Council's (NANC's) Local Number Portability Administration Working Group (LNPA WG) approved three change orders—NANC Change Orders 429, 430, and 435—to include three optional data parameters into the Number Portability Administration Center (NPAC) database. These data—one for Voice Uniform Resource Identifiers (Voice URI), one for Multimedia Messaging Services (MMS) URI, and one for Short Messaging Service (SMS) URI—facilitate IP-IP services and thereby accommodate the technological evolution of the NPAC database as envisioned by Congress and the Federal

NANC Dispute Resolution Panel
August 14, 2009
Page 2

Communication Commission (FCC or Commission).¹ Pursuant to the LNPA WG's approval, and following standard protocol and procedure for updating the NPAC database, the North American Portability Management LLC (NAPM LLC) and NeuStar, Inc. (NeuStar)—the database's administrator—recently negotiated Amendment 72 to each of their regional Contractor Services Agreements for NPAC/SMS (the Master Agreements), which authorized implementation of the three data parameters into an already-existing NPAC data field.

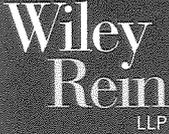
Now, in an unprecedented effort to circumvent the standard process followed by the NANC and NAPM LLC in approving new data fields, Telcordia Technologies, Inc. (Telcordia) requests that the NANC strike down Change Orders 429, 430, and 435. Telcordia claims that the Change Orders are “procedurally defective” in that the NANC or the Commission—and not the LNPA WG or the NAPM LLC—must make a formal and explicit finding that “information is necessary to route telephone calls” in order for data to be included in the NPAC.² Telcordia further argues that even if the LNPA WG and NAPM LLC possess such authority, the Change Orders violate 47 C.F.R. § 52.25(f) because the new fields are not “necessary to route telephone calls.”³

These arguments are completely unfounded. In fact, the request to reverse the decision to add these data contradicts more than twelve years of precedent regarding the proper procedure for updating the NPAC database. Moreover, the Change Orders are consistent with Section 52.25(f). Telcordia's narrow reading of

¹ *In re Telephone Number Requirements for IP-Enabled Services Providers, Local Number Portability Porting Interval and Validation Requirements, IP-Enabled Services, Telephone Number Portability, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking*, 22 FCC Rcd 19531, 19544 (2007) (*Telephone Number Portability Order*) (determining “to ensure that consumers retain [their local number portability (LNP)] benefit as technology evolves” because the Commission “continue[s] to believe that Congress's intent is that number portability be a ‘dynamic concept’ that accommodates such changes”) (citing *Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 96-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697, 23708 (2003) (discussing the reasonableness of differences in porting obligations due to differences in the technological feasibility of different types of porting) (*Intermodal Number Portability Order*)).

² Letter from John Nakahata, Wiltshire Grannis to Thomas Koutsky, Chairman, North American Numbering Council at 1 (May 26, 2009) (Telcordia Request).

³ *Id.*



1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

NANC Dispute Resolution Panel
August 14, 2009
Page 3

the terms “telephone call” and “necessary” is simply incompatible with state and federal case law, Commission practice, and Congressional intent.

The Commission established NANC, in part, to break up the Bell Communications Research (Bellcore) monopoly over numbering databases, and NeuStar owes its existence to the Commission’s effort to interject competition into numbering database administration. Telcordia—the successor-in-interest to Bellcore that still operates the Local Exchange Routing Guide (LERG)—is seeking regulatory protection for the IP-based routing database it is deploying for the Country Code 1 ENUM LLC. Telcordia’s goal, simply stated, is to prevent IP-routing information from being included in the NPAC database in order to eliminate the NPAC as a competitive option for carriers seeking to route traffic using Internet-protocol technology.

In the end, Telcordia’s request fails to offer any compelling reason for the NANC to take the unprecedented step of overturning the reasonable decision of the LNPA WG and NAPM LLC to include the Voice, SMS, and MMS URIs in the NPAC database.

I. THE NANC SHOULD NOT INTERFERE WITH THE LONGSTANDING DATA FIELD APPROVAL PROCESS.

Telcordia argues that the LNPA WG and the NAPM LLC did not possess the authority to add the Voice, SMS, and MMS URIs to the NPAC database. In particular, Telcordia argues that “Change Orders 429, 430 and 435 cannot lawfully be implemented in the NPAC dataset without an express NANC or FCC finding that these URIs are ‘necessary to route telephone calls to telecommunications carriers.’”⁴ However, in approving the implementation of those data parameters, the LNPA WG and NAPM LLC followed the process that they have used—and that has been implicitly approved by the NANC—without complaint for hundreds of change orders over more than a decade since the inception of the NPAC database. There exists no reason to interfere now with this process.

Pursuant to its statutory mandate in Section 251 of the Communications Act of 1934, as amended,⁵ the Commission, in its *First LNP Order*,⁶ adopted rules to

⁴ *Id.* at 6.

⁵ *See* 47 U.S.C. § 251.



1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

NANC Dispute Resolution Panel
August 14, 2009
Page 4

regulate local number portability (LNP) administration. In that order, the Commission delegated certain authority over LNP issues to the NANC.⁷ The NANC, as the FCC's website states, "conducts most of its business" through its working groups.⁸ These groups are open to any interested party⁹ and operate by consensus just as the NANC does.¹⁰ Moreover, even when the NANC is meeting irregularly, the working groups continue to meet so that any developments can be addressed in a timely manner. In this case, the LNPA WG meets monthly and thus can render decisions quickly and efficiently using the same procedures as the NANC to ensure that the database remains current with technological advancements.¹¹

The NANC Operating Manual provides that the LNPA WG's mission is to be "responsible for the business functionality of the national LNP system and how Service Providers inter-operate with it."¹² The Operating Manual goes on to state

(Continued . . .)

⁶ *In re Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, 11 FCC Rcd 8352 (1996) (*First LNP Order*).

⁷ *Id.* at 8401-02; *see also In re Telephone Number Portability*, Second Report and Order, CC Docket No. 95-116, 12 FCC Rcd 12281, 12289 (1997) (*Second LNP Order*) ("In the [*First LNP Order*], the Commission directed the NANC to recommend one or more independent, non-governmental entities that are not aligned with any particular telecommunications segment, to serve as local number portability administrator(s). The Commission also directed the NANC to make recommendations regarding the administration selection process, the duties of local number portability administrator(s), the location of regional databases, the overall national architecture, and technical specifications for the regional databases.").

⁸ Federal Communications Commission, NANC Working Groups, *available at* http://www.fcc.gov/wcb/cpd/Nanc/working_groups.html.

⁹ NANC Operating Manual (Version 2) at 16 (Sept. 9, 2006) (NANC Operating Manual).

¹⁰ *Id.* at 8, 20. As the NANC Operating Manual makes clear, consensus is not the same as unanimity. *See id.* at 8 ("When a decision must be made and unanimity is not possible, NANC decisions will be made by consensus.").

¹¹ In general, the LNPA WG meets in person or by conference call every month. In contrast, the NANC meets less frequently and not always at regular intervals. For example, nearly eighteen months passed between the NANC's two most recent meetings.

¹² NANC Operating Manual at 19.



1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

NANC Dispute Resolution Panel
August 14, 2009
Page 5

that the “LNPA WG was given the charter by the North American Number Council (NANC) for implementing Local Number Portability on a national level,” and as part of that role “is . . . responsible for defining the requirements for the national Number Portability Administration Center (NPAC) Service Management System (SMS) and how it interfaces to each Service Provider’s local LNP system to enable LNP.”¹³

The Commission also established an important role for the NAPM LLC in number portability management. By the time the *First LNP Order* was adopted, carriers throughout the country already had formed LLCs and begun negotiations on agreements with potential Local Number Portability Administrators (Administrators) (*i.e.*, Master Agreements). As a result, the NANC chose to forego an independent review process, and, based on the LLCs’ recommendations, advised the Commission that Lockheed-Martin IMS (LMIMS) and Perot Systems (Perot) should be selected as the Administrators, subject to completion of negotiations regarding the Master Agreements.¹⁴

In its *Second LNP Order*, the Commission adopted this recommendation,¹⁵ as well as NANC’s recommendation that the NAPM LLCs “*provide immediate oversight and management of the [Administrators].*”¹⁶ The Commission noted that “the LLCs were responsible for negotiating the contracts with their respective local number portability administrators,”¹⁷ such that neither the NANC nor the Commission took a role in those negotiations or otherwise reviewed or approved the Master Agreements that govern the technical requirements of the NPAC. As the Commission explained, there was no indication that NANC or Commission oversight or review of the agreements “would be preferable to LLC oversight,”¹⁸ as the LLCs are “best able to provide immediate oversight of” the Administrators.¹⁹

¹³ *Id.*

¹⁴ *Second LNP Order*, 12 FCC Rcd at 12283-84, 12299-300.

¹⁵ *Id.* at 12303.

¹⁶ *Id.* at 12346 (emphasis added).

¹⁷ *Id.*

¹⁸ *Id.* at 12303, 12350-51.

¹⁹ *Id.* at 12346.



1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

NANC Dispute Resolution Panel
August 14, 2009
Page 6

The Commission provided that the NANC should have the more limited role of reviewing and overseeing the LLCs' management of the Administrators, subject to Commission review.²⁰

This oversight regime was also specifically applied to the change management process governing modifications to the LNP "architectural, technical and operational standards" and "related specifications and processes."²¹ The FCC adopted the NANC's recommendation that the NANC be authorized "to approve or disapprove all [NPAC] changes, and that each respective regional LLC manage implementation of these changes with its respective [Administrator]."²² The Commission explained that "each LLC is the entity with the greatest expertise regarding the structure and operation of the database for [each] region," and that, without LLC oversight of "database system enhancements and other modifications," the LLCs' expertise would be wasted, running "the risk that necessary modifications to the database system may be delayed."²³

Since the inception of the NPAC, the process for determining whether new fields, parameters, or data elements should be added to the database has remained the same. First, the LNPA WG, on behalf of the NANC, considers the addition of new fields, parameters, elements and other changes to the database. Then, those changes that the LNPA WG approves are forwarded to the NAPM LLC for its consideration. As mentioned *supra*, this same process has been implemented hundreds of times with respect to Change Orders since national LNP was implemented in the 1990s. This is the procedure that the NANC, through its LNPA WG, has used to determine the information that should be included in the database, as required under FCC rules. Nowhere do the FCC rules require a separate, explicit finding that information is "necessary to route telephone calls." Rather, the NANC, through its LNPA WG, carries out its role under the rules and makes the requisite findings through LNPA WG approval of additions to the database. NeuStar is not

²⁰ *Id.* at 12345; *see also* 47 C.F.R. § 52.26(b)(2) (stating that the LLCs "shall manage and oversee the [Administrators], subject to review by the NANC"); *id.* § 52.26(b)(3) ("The NANC shall provide ongoing oversight of number portability administration, including oversight of the regional LLCs, subject to Commission review.").

²¹ *Second LNP Order*, 12 FCC Rcd at 12321.

²² *Id.*

²³ *Id.* at 12346.

NANC Dispute Resolution Panel

August 14, 2009

Page 7

aware of any instance since the inception of the NPAC that either the NANC or its LNPA WG has made the separate finding that Telcordia asserts—without supporting authority—is necessary. Even in an instance when the FCC directly approved of an addition, no entity made the separate explicit finding that Telcordia claims must be made prior to any addition to the database.²⁴ To accept Telcordia's arguments would undermine the validity of all of the change orders that added information to the database over more than a decade.

In this instance, the industry and other stakeholders have been considering the inclusion of the Voice, MMS, and SMS URIs in the NPAC database for a number of years. In 2004, the LNPA WG began consideration of Change Order 400, which proposed adding four IP parameters to an already-existing field in the NPAC database, including those enabling Voice, SMS, and MMS data. The working group reached consensus that Change Order 400 should be included in the NPAC database in an "inactive state."²⁵ In 2005, the Commission directed that this Change Order be held in abeyance, but in a February 4, 2008 letter, the Chief of the Wireline Competition Bureau—relying on the Commission's action extending LNP obligations to interconnected VoIP providers—informed the NANC Chair that the "industry could reconsider Change Order 400 rather than continue to hold in abeyance its consideration."²⁶ In doing so, the Wireline Bureau Chief gave the "green light" to the industry to include the new IP routing information in the NPAC database if it deemed such action appropriate.

Shortly after the abeyance was lifted, the industry began reexamining these issues. In May 2008, the LNPA WG separated Change Order 400 into four separate orders, one for each IP data parameter. Change Order 429 addresses Voice URI, Change Order 430 addresses MMS URI, Change Order 431 addresses PoC URI, and Change Order 432 addresses Presence URI. A month later, the LNPA WG also added Change Order 435 to address SMS URI. Early this year, the LNPA WG reached consensus that three of the IP data parameters, *i.e.*, Change Orders 429, 430, and 435, should be forwarded to the NAPM LLC for consideration for

²⁴ See Letter from Thomas J. Navin, Chief, Wireline Competition Bureau to Robert C. Atkinson, Chair, North American Numbering Council (Aug. 11, 2005) (*Navin Letter*).

²⁵ LNPA WG, April 2005 Meeting, Final Minutes at 14.

²⁶ Letter from Dana R. Shaffer, Chief, Wireline Competition Bureau, to Thomas M. Koutsky, Chair, North American Numbering Council at 1 (Feb. 4, 2008) (*Shaffer Letter*).

NANC Dispute Resolution Panel
August 14, 2009
Page 8

inclusion in the NPAC. The NAPM LLC then approved Change Orders 429, 430, and 435 and asked NeuStar to include them in the NPAC via Amendment 72 to the Master Agreements.

The LNPA WG and the NAPM LLC plainly had authority to implement the changes to the NPAC database, and they did so by following procedures used for over a decade. At no time prior to Telcordia's recent petition to the Commission²⁷ has any party complained that the change order approval process was flawed. Only now, while trying to hinder competition by precluding an IP routing option for carriers, does Telcordia raise this process as an issue.²⁸

If the NANC now steps in to recommend overturning the reasonable decisions of the LNPA WG and the NAPM LLC, it would significantly hinder the technological evolution of the database and undermine Congressional intent to make number portability a "dynamic concept" that accommodates new technology. The data field approval process has worked well for over a decade, and there exists no reason to alter that process now.²⁹

II. COMMISSION RULE 52.25(F) DOES NOT FORECLOSE ADDITION OF THE INTERNET ROUTING INFORMATION TO THE NPAC DATABASE.

Telcordia claims that 47 C.F.R. § 52.25(f) renders the addition of the Voice, MMS, and SMS URI parameters to the NPAC database unlawful because they are not "necessary to route telephone calls." Specifically, Telcordia asserts that at least

²⁷ See *Petition of Telcordia Technologies to Reform or Strike Amendment 70*, WC Docket No. 07-149 (filed May 20, 2009).

²⁸ Telcordia's longstanding relationship with the NANC and familiarity with its processes undermine the credibility of its request. As the provider of the Local Exchange Routing Guide and successor to Bellcore, the former administrator of the North American Numbering Plan, Telcordia has been participating in the NANC and the LNPA WG for more than a decade. Yet, at no time in the past did Telcordia assert that the LNPA WG and the NAPM LLC lacked the authority to make changes to the information included in the NPAC database.

²⁹ Although the process has worked well to solve complex technological issues to the benefit of the industry and consumers, if the Commission or the NANC believes that the process should be changed, in order to avoid having to revisit change orders adopted over more than a decade, the process should only be changed prospectively.

NANC Dispute Resolution Panel
August 14, 2009
Page 9

two of these parameters, and possibly all three, do not involve “telephone calls” and that they are not “necessary” in the NPAC because traffic can be routed without these data. Telcordia’s proposed restrictive interpretation of Rule 52.25(f) fundamentally misconstrues the Communications Act and Commission precedent and would undermine Commission rules and policy objectives if adopted.

A. The term “telephone calls” is broader than “telecommunications services.”

Telcordia contends that Change Orders 430 and 435 violate Rule 52.25(f) because the rule “does not extend to non-telecommunications services” and “MMS and SMS are not telecommunications services.”³⁰ This argument is meritless—both Congress and the Commission have used the term “telephone call” when referring to services that could be either “telecommunications services”³¹ or “information services”³² under the 1996 Act definitions. Indeed, the term has been used to mean more than just basic voice transmission service on numerous occasions.³³ For example, the Telecommunications Consumer Protection Act of 1991,³⁴ which

³⁰ Telcordia Request at 11-12. Telcordia appears to concede that Voice URI falls within its overly restrictive definition of “telephone call.” *See id.* at 13 (“[S]etting aside any issues of the regulatory classification of VoIP services, with respect to Change Orders 430 and 435, it is difficult to see how they can meet the standard of ‘necessary to route telephone calls to the appropriate telecommunications carriers.’”).

³¹ *See* 47 U.S.C. § 153(46) (“The term ‘telecommunications service’ means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.”); *id.* § 153(43) (“The term ‘telecommunications’ means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”).

³² *See* 47 U.S.C. § 153(20) (“The term ‘information service’ means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.”).

³³ *See Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, 22 FCC Rcd 6927, 6956 ¶ 56 (2007); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11544 (1998) (Stevens Report) (deferring classification of “‘phone-to-phone’ IP telephony” services).

³⁴ 47 U.S.C. § 227.

NANC Dispute Resolution Panel
August 14, 2009
Page 10

protects consumers from various telemarketing practices, prohibits “telephone calls” that include the transmission of information services consisting of “artificial or prerecorded voice” messages to residential lines.³⁵ In implementing the TCPA, the Commission has specifically stated that the TCPA’s prohibition on autodialed telephone calls “encompasses both voice calls and text calls to wireless numbers including, for example, short message service (SMS) calls.”³⁶ Moreover, Section 223 of the Communications Act makes it unlawful to place “telephone calls” that deliver pre-recorded “dial-a-porn” messages.³⁷ And based on this broad interpretation by both Congress and the Commission, the industry has likewise recognized that “calls” means more than just telecommunications services.³⁸

Recent court opinions also support a broad interpretation of the term “telephone call.” In particular, both the Ninth Circuit and the Arizona Supreme Court have held that the TCPA’s prohibition on certain telemarketing calls extends to text messages.³⁹ As the Arizona Supreme Court explained, “[t]he TCPA does not limit the attempt to communicate by telephone to two-way real time voice ‘intercommunication’ . . . It is the act of making a call, that is, of attempting to communicate to a cellular telephone number using certain equipment, that the TCPA prohibits. Whether the call had the potential for a two-way real time voice communication is irrelevant.”⁴⁰ The Ninth Circuit similarly stated, “[g]iven that the

³⁵ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Request of ACA International for Clarification and Declaratory Ruling*, 23 FCC Rcd 559, 560 (2008); *see also* 47 C.F.R. § 64.1200 *et seq.*

³⁶ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd 14014, 14115 (2003); *see also Rules and Regulations Implementing and Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003; Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 19 FCC Rcd 15927, 15934 (2004) (stating that the “prohibition on using automatic telephone dialing systems to make calls to wireless phone numbers applies to text messages (e.g., phone-to-phone SMS), as well as voice calls”).

³⁷ *See Sable Communications v. FCC*, 492 U.S. 115 (1989).

³⁸ Letter from Dan A. Sciullo, Berenaum Weinshienk, to Marlene Dortch, Secretary, Federal Communications Commission at 7 (June 18, 2009) (*NAPM LLC Ex Parte*).

³⁹ *See, e.g., Satterfield v. Simon & Schuster*, -- F.3d --, 2009 WL 1708081 (9th Cir. June 19, 2009); *Joffe v. Acacia Mortgage Corp.*, 211 Ariz. 325 (2006).

⁴⁰ *Joffe*, 211 Ariz. at 329-30.

NANC Dispute Resolution Panel
August 14, 2009
Page 11

TCPA was enacted to regulate the receipt of automated telephone calls, Congress used the word ‘call’ to refer to an attempt to communicate by telephone.”⁴¹ Were the Commission now to adopt Telcordia’s restrictive definition of “telephone calls,” it would contradict these decisions and limit enforcement of the TCPA.

Additionally, the nature of the NPAC database itself supports this reading of Rule 52.25(f). Since its inception, the NPAC database has included fields related to information services. “Software Release 1.0” included fields associated with Custom Local Area Signaling Services (CLASS),⁴² Line Information Data Bases (LIDB),⁴³ Calling Name (CNAM),⁴⁴ and Inter-Switch Voice Messaging Message Waiting Indicator (ISVM MWI).⁴⁵ “Software Release 2.0” added fields to permit routing of Wireless Short Message Service (SMS) text messaging.⁴⁶ Although some of these fields are related to telecommunications services, ISVM and SMS are clearly associated with information services; nevertheless fields supporting these services have been included in the NPAC since its earliest years. Telcordia’s assertion that only information related to the routing of telecommunications services is permitted to be included in the NPAC cannot be correct—the term “telephone calls” as used in Rule 52.25(f) broadly includes both telecommunications and information services.

⁴¹ *Satterfield*, 2009 WL 1708081, at *6.

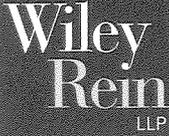
⁴² The CLASS field indicates the destination switch for auto call return.

⁴³ The LIDB field indicates the LIDB database containing the ported number line information (e.g., for performing alternate billed call setup and billing).

⁴⁴ The CNAM field indicates the CNAM database with information about the ported number to provide the caller name in caller ID information.

⁴⁵ ISVM, a voice mail service provided on a centralized basis, is an information service. Like plain voice mail, this service allows users to store information and interact with stored information unrelated to the placing of a telephone call. These characteristics place voice mail, as well as electronic mail, firmly in the enhanced (information) service category. *See Amendment of Section 64.702 of the Commission’s Rules and Regulations (Second Computer Inquiry)*, 84 FCC.2d 50, 54-55 (1980).

⁴⁶ SMS is a store-and-forward method of transmitting messages to and from wireless devices. Store-and-forward technology is generally considered a characteristic of an information service. *See, e.g., Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Further Notice of Proposed Rulemaking, 13 FCC Rcd 21531, 21533 (1998).



1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

NANC Dispute Resolution Panel
August 14, 2009
Page 12

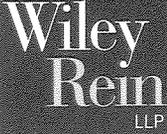
The new SMS and MMS URI parameters are analogous to these other data fields that are not directly related to the routing of voice traffic yet have long been included in the NPAC database. Even if, as Telcordia claims, these fields “represent[] a wholly separate technology and network outside of the PSTN,”⁴⁷ they nevertheless permit the routing of services other than traditional circuit-switched voice services and thereby facilitate portability just as some of the current database fields do. The superficial differences between the URI parameters and the current data fields are simply inapposite. Accordingly, they further the NPAC’s essential purpose as contemplated by the Commission and the LNPA WG, and thus do not violate Commission Rule 52.25(f).⁴⁸

Ultimately, the Commission’s use of the broad term “telephone call”—as opposed to “telecommunications services”—in Rule 52.25(f) indicates that it recognized the need for some flexibility in how the number portability database should evolve with the development of new technologies beyond then existing circuit-switched voice telephone service. Indeed, this interpretation is consistent with the Commission’s belief that “Congress’s intent is that number portability be a ‘dynamic concept’ that accommodates [technological] changes.”⁴⁹ It is also consistent with the Commission’s general policy favoring the rapid deployment of next-generation communications services. The addition of the Voice, MMS, and SMS URI parameters to the NPAC database is necessary to facilitate the economical and efficient provision of these burgeoning services. Thus, to read Rule

⁴⁷ Telcordia Request at 14 (quoting *Report and Recommendation on NANC Change Orders 399 & 400*, Future of Numbering Working Group at 32-33 (June 10, 2005) (FoN WG Report)).

⁴⁸ Telcordia also states, “As the Future of Numbering Working Group report observed, ‘the NANC may be embarking upon a groundbreaking venture to allow IP-to-IP routing information to reside in this “telecommunications services” database.’” Telcordia Request at 13 (quoting FoN WG Report at 26). However, the statement is misleading. The FoN WG itself did not make this observation. Rather, the FoN WG Report includes two sections addressing the arguments for and against adopting Change Order 400: one drafted by industry participants supporting Change Order 400, and one drafted by those opposing it, *including Telcordia*. See FoN WG Report at 9; NANC Future of Numbering Working Group, *Concerns and Issues re NANC Change Order 400* (May 11, 2005) (listing Adam Newman from Telcordia Technologies, Inc. as a “Source”). This statement was lifted from the “Opposition” section of the Report and thus in no way reflects the views of the FoN WG. Indeed, Telcordia’s Request is riddled with such misleading claims.

⁴⁹ *Telephone Number Portability Order*, 22 FCC Rcd at 19544 (citing *Intermodal Number Portability Order*, 18 FCC Rcd at 23708 (discussing the reasonableness of differences in porting obligations due to differences in the technological feasibility of different types of porting)).



1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

NANC Dispute Resolution Panel
August 14, 2009
Page 13

52.25(f) consistently with the Communications Act's use of the term, the Commission's rules, as well as the Commission's understanding of the nature of the NPAC database, the term "telephone call" must encompass other non-circuit-switched voice services that also require or are affected by "number portability."

B. Telcordia's reading of "necessary" is overly restrictive.

Telcordia further asserts that Rule 52.25(f) prohibits the inclusion of the URI parameters in the NPAC database because they are not "necessary" to route telephone calls. The extent of Telcordia's thin analysis is that because calls are completed today without this information, these data are not "necessary." According to Telcordia, the Commission "made clear" in Rule 52.25(i) "that information not necessary to the routing of telephone calls to the appropriate telecommunications carriers can be placed in separate, downstream databases that are not part of the NPAC database, but that combine information from the NPAC database with other data."⁵⁰ Again, Telcordia's view constitutes an overly narrow interpretation of the Commission's rules.

First, the limiting language in Section 52.25(f) was never intended to exclude alternative routing information. Instead, the limitation was put in place to prevent information that had nothing to do with number portability or call routing generally from being included in the database. Indeed, to understand properly the scope of rule 52.25(f), the stated limitation must be read in the context of the *First LNP Order*, which first articulated the rule. In that order, the FCC stated:

We believe that, at this time, the information contained in the number portability regional databases should be limited to the information necessary to route telephone calls to the appropriate service providers. The NANC should determine the specific information necessary to provide number portability. To include, for example, the information necessary to provide E911 services or proprietary customer-specific information would complicate the functions of the number portability databases and impose requirements that may have varied impacts on different localities. For instance, because different localities have adopted different emergency response systems, the regional databases would have to be configured in such a fashion as to provision the appropriate emergency information to

⁵⁰ Telcordia Request at 11.

NANC Dispute Resolution Panel
August 14, 2009
Page 14

each locality's particular system. Similarly, special systems would need to be developed to restrict access to proprietary customer-specific information. In either instance, the necessary programming to add such capabilities to the regional databases would complicate the functionality of those databases.⁵¹

Thus, the rule was designed to ensure that the database only contained information related to routing, as opposed to E911 or CPNI information. It was not designed to exclude information otherwise helpful to effectively and efficiently route telephone calls.

Rule 52.25(i)—which provides that “[i]ndividual carriers may mix information needed to provide other services or functions with the information downloaded from the regional databases at their own downstream databases”—does not suggest otherwise. Rather, the rule simply makes clear that although information that has nothing to do with routing generally—such as E911 and CPNI information—should not be included in the NPAC database, it still may be included in the downstream databases. The *First LNP Order* explains:

Because we require open access to the regional databases, it would be inequitable to require carriers to disseminate, by means of those databases, proprietary or customer-specific information. We therefore contemplate that the regional deployment of databases will permit individual carriers to own and operate their own downstream databases. These carrier-specific databases will allow individual carriers to provide number portability in conjunction with other functions and services. To the extent that individual carriers wish to mix information, proprietary or otherwise, necessary to provide other services or functions with the number portability data, they are free to do so at their downstream databases. We reiterate, however, that a carrier may not withhold any information necessary to provide number portability on the grounds that such data are combined with other information in its downstream database; it must furnish all information necessary to provide number portability to the regional databases as well as to its own downstream database.⁵²

⁵¹ *First LNP Order*, 11 FCC Rcd at 8403-04.

⁵² *Id.* at 8404.

NANC Dispute Resolution Panel
August 14, 2009
Page 15

In other words, Rule 52.25(i) offers no support to Telcordia's claim that information helpful to effectively and efficiently route telephone calls must be excluded from the NPAC database.

The Commission's intent is further clarified by its statements that the NPAC should contain the "specific information necessary to provide number portability,"⁵³ and that number portability should be provided "without impairment of quality, reliability, or convenience,"⁵⁴ as well as the statement in the 1997 LNPA WG Report that the NPAC is to be used "to provide billing, routing, and/or rating."⁵⁵ The "information necessary to provide number portability" from one carrier to another "without impairment of quality, reliability, or convenience" is much broader in scope than Telcordia's definition would allow.

Second, it has always been recognized that the concept of number portability—via the NPAC database—encompasses more than the mere routing of telephone calls. The FCC elaborated upon the scope of the database in the *Second LNP Order*, which cited the LNPA WG Report and incorporated it into the FCC's LNP rules.⁵⁶ Appendix D to the LNPA WG Report provides that NPAC users must be carriers or entities under contract with a carrier "to provide billing, routing, and/or rating" services for that carrier.⁵⁷ Appendix D further states that "[t]he above criteria limits [sic] NPAC access to those with an operational need for NPAC service in order to provide local number portability."⁵⁸ 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. For example, as noted *supra* in Section A, the NPAC contains fields associated with CLASS, LIDB and CNAM services,

⁵³ *Id.* at 8403.

⁵⁴ *Id.* at 8366-67.

⁵⁵ North American Numbering Council, Local Number Portability Administration Selection Working Group, App. D, § 12.2.4 (April 25, 1997) (LNPA WG Report).

⁵⁶ The LNPA WG Report is incorporated by reference at 47 C.F.R. § 52.26(a).

⁵⁷ LNPA WG Report, App. D, § 12.2.4.

⁵⁸ *Id.*

NANC Dispute Resolution Panel
August 14, 2009
Page 16

among others,⁵⁹ all of which enable number portability but would not meet Telcordia's overly narrow definitions. A logical reading of the FCC rules and orders requires that the NPAC contain all of the information necessary to carry out the full set of number portability objectives enumerated in the FCC's orders and regulations, including the LNPA WG Report.

Third, Telcordia's narrow interpretation of "necessary to route telephone calls" would prohibit the inclusion of *any* new technologies for the routing of telephone calls in the NPAC database because there will always exist the possibility of using the legacy circuit-switched network to facilitate routing.⁶⁰ For example, the Voice URI enables the routing of a voice call that both originates and terminates with a different carrier as an IP call to be routed entirely as an IP call. However, such a call *could* be routed without the Voice URI by transcoding the call data from its originating IP format to the time division multiplexing (TDM) format used by circuit-switched networks, routing the call to the terminating provider, and then transcoding the call back to its IP format for termination to the end user. Following Telcordia's logic, even though this latter process is far less efficient, it must be maintained because, in light of its mere existence, any different process—including Voice URI—is technically not "necessary." Such ossification of number portability technology is directly at odds with Congress's intent to make number portability a "dynamic concept." Indeed, the FCC surely could not have intended such an absurd result when it sought to exclude 911 information and CPNI from the NPAC.⁶¹

⁵⁹ For example, the NPAC also contains service provider type to distinguish between wireless and wireline telephone numbers; alternate service provider ID information to indicate when a carrier has given a number to a reseller, MVNO, VoIP provider, or other provider; and an activation timestamp to show when a ported number record was activated. All of these enable number portability but are not used for call routing in the strict sense urged by Telcordia.

⁶⁰ See Telcordia Request at 13-14 ("All of these types of messages—IP-IP voice traffic, MMS and SMS—can be completed today using the NPAC only to identify the service provider ID associated with a ported number.").

⁶¹ On several occasions, Telcordia indicates that the FoN WG determined that Change Orders 429, 430, and 435 are not necessary to route telephone calls. See, e.g., Telcordia Request at 14 ("This was expressly addressed in the 2005 Future of Numbering Working Group Report on NANC Change Order 400: 'No additional information beyond that currently in the NPAC is needed to complete telephone calls to the ported numbers through the PSTN.'" (quoting FoN WG Report at 25)); see also *id.* at 4. However, the FoN WG made no such conclusion. As explained above, see *supra* n. 48, Telcordia selectively quotes language from the "Opposition" section of the FoN WG Report that merely represents the views of industry opponents—including *Telcordia itself*—regarding Change Order 400, not the FoN WG.

NANC Dispute Resolution Panel

August 14, 2009

Page 17

All three IP parameters sought to be added to the NPAC database facilitate the more efficient routing of calls to numbers that have been pooled or ported from one carrier to another, some of which may be used for VoIP or other IP services. 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.⁶² In fact, many IP services do not function if transcoded to TDM; they must be transmitted in an IP format from origination to termination. If these forms of communication are ever to cross from one network to another, IP routing information must be available to the providers. Accordingly, Telcordia's insistence that a carrier use the default legacy network violates the Commission's directive that number portability should be provided "without impairment of quality, reliability, or convenience,"⁶³ as well as the Commission's goal that "any long-term [portability] method ensure that carriers have the ability to route telephone calls and provide services to their customers independently from the networks of other carriers."⁶⁴ As the Commission has explained, "[r]equiring carriers to rely on the networks of their competitors in order to route calls can have several undesirable effects."⁶⁵

Moreover, contrary to Telcordia's assertion, the existence of fledging ENUM directories does not render it inappropriate to include the new fields in the NPAC database. As the "Support" section of the FoN WG Report states:

ENUM and NANC 400 have little technological overlap at this time and in fact they are complementary. Furthermore there are many outstanding issues with regard to ENUM deployment that will effect [sic] how and if carriers choose to use it as a tool for resolving TNs/ported TNs to URI mapping. To simply assume that issues such as those resolved by NANC 400 (TN to URI provisioning and update synchronization for ported and pooled TNs) will be efficiently and cost effectively resolved somewhere down the road could prove to be rather short sighted. NANC 400 can be

⁶² *NAPM LLC Ex Parte* at 5.

⁶³ *First LNP Order*, 11 FCC Rcd at 8366-67.

⁶⁴ *Id.* at 8380

⁶⁵ *Id.*

NANC Dispute Resolution Panel
August 14, 2009
Page 18

complementary and likely beneficial to any routing solution that eventually entrenches itself (this data will always need to be provisioned in some manner).⁶⁶

In other words, it is unclear what course ENUM may take. While some carriers may be attracted to one ENUM directory, other carriers may want to have alternative options. Here, Telcordia is attempting to preclude an IP routing option for carriers in order to gain an advantage for the ENUM database it is deploying for the CC1 ENUM LLC.

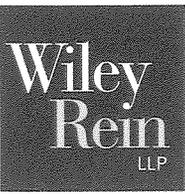
Fourth, facilitating IP to IP routing in the NPAC complies with the FCC's *Interconnected VoIP LNP Order*. In that order, the Commission determined "to ensure that consumers retain [their LNP] benefit as technology evolves [because] we continue to believe that Congress's intent is that number portability be a 'dynamic concept' that accommodates such changes."⁶⁷ Thus, for the first time, the Commission extended LNP obligations to interconnected VoIP providers. After the Wireline Competition Bureau Chief removed the abeyance on considering the addition of certain new fields,⁶⁸ including Internet Protocol end points in the LNP database, the NANC, through its LNPA WG and the NAPM LLC, acted to respond to the FCC's *Interconnected VoIP LNP Order*. Therefore, Telcordia's interpretation of Rule 52.25(f) is plainly contrary to the Commission's rules and policies.⁶⁹

⁶⁶ FoN WG Report at 21.

⁶⁷ *Telephone Number Portability Order*, 22 FCC Rcd at 19544 (citing *Intermodal Number Portability Order*, 18 FCC Rcd at 23708 (discussing the reasonableness of differences in porting obligations due to differences in the technological feasibility of different types of porting)).

⁶⁸ *Shaffer Letter* at 1.

⁶⁹ Telcordia's Request also provides that "[t]he June 2005 Future of Numbering Working Group Report highlighted competition concerns related to and arising from the inclusion of URI fields in the NPAC." Telcordia Request at 15. Yet again, the language quoted by Telcordia comes from the "Opposition" section of the FoN WG Report and thus represents the views of industry opponents of Change Order 400—including *Telcordia*—and not the FoN WG. In any event, inclusion of the new URIs in the NPAC database will not lead to a monopoly that crowds out ENUM, but rather, will introduce a competitor in the market for IP-IP communications services. This, ultimately, is the motive behind Telcordia's request—it merely wishes to keep new ENUM competitors out of the marketplace.



1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

NANC Dispute Resolution Panel
August 14, 2009
Page 19

C. Telcordia's interpretation of Rule 52.25(f) would create unwanted consequences.

As noted above, hundreds of modifications have been made to the NPAC since it began operation. However, were the Commission now to adopt Telcordia's reading of Rule 52.25(f), many of these modifications—which have bestowed enormous benefits on the public—would be in jeopardy. As just one example, NANC Change Order 399 added SV type and Alternate Service Provider Identification (SPID) type indicator data fields. The latter information indicates when the carrier has given a telephone number to another operator such as a reseller, MVNO, or VoIP provider. Under Telcordia's unduly narrow interpretation of Commission Rule 52.25(f), these optional data parameters would not have been permitted because they technically are not "necessary to route telephone calls." Yet, not only did the FCC direct that this information be included in the NPAC,⁷⁰ but this information has proven to be critical to law enforcement as it seeks to conduct searches as quickly and efficiently as possible to deliver accurate subpoenas without delay.⁷¹ Thus, Telcordia's overly narrow interpretation of the rule would not only undercut existing Commission policies, but it would also undercut law enforcement's ability to investigate criminal wrongdoing.⁷²

III. CONCLUSION

In sum, Telcordia's request should be rejected and the determination by the LNPA WG and the NAPM to add IP routing information in the form of URIs to the NPAC should be allowed to stand. As demonstrated in Section I *supra*, the LNPA WG and the NAPM followed procedures that have been in place for more than a decade to approve modifications to the NPAC contracts. The NANC should not lightly permit a disgruntled vendor to overturn such long-standing procedures.

⁷⁰ See *Navin Letter*.

⁷¹ Attached as Appendix A are letters and emails from the United States Marshals Service of the US Department of Justice; the Office of the District Attorney of Rockingham County, New York; and the Special Investigations Division of the Montgomery County (MD) Police Department, all indicating the importance of Change Order 399.

⁷² It is important to note that Telcordia provides no support for its assertion that "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." See Telcordia Request at 5.



1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

NANC Dispute Resolution Panel
August 14, 2009
Page 20

Further, the URIs in question are necessary to route telephone calls in compliance with Rule 52.25(f). Based upon both Commission and court interpretations, the term “telephone calls” is broader than Telcordia asserts. Indeed, such an interpretation has been followed since the inception of the NPAC. The URIs are also necessary for the routing of IP-based communications. Although some IP-based services such as VoIP can be transcoded for routing over the circuit-switched network, they can only do so with loss of quality and efficiency. Other IP-based services, however, must remain in an IP format from end-to-end; these cannot default to the PSTN for routing. URIs are clearly necessary to route these communications.

Telcordia’s self-serving request is nothing more than a veiled attempt to gain competitive advantage for itself at the expense of the efforts to advance the country’s communications infrastructure to meet the needs of the broadband world. Accordingly, the NANC should reject Telcordia’s effort to forestall the necessary evolution of the NPAC because that effort is blatantly against the public interest. Instead, the NANC should support the actions of the LNPA WG and the NAPM in promoting options for efficient IP-routing which, in turn, will spur demand for IP networks and applications and foster broadband deployment.

Sincerely,

Thomas J. Navin
Partner

APPENDIX A



U.S. Department of Justice

United States Marshals Service

Investigative Operations Division

www.usdoj.gov/marshals

May 9, 2008

By email to Bobby.Wiggins@Neustar.biz

Mr. Bobby Wiggins, Director of Fiduciary Services

LEAP Program Manager

Neustar, Inc.

46000 Center Oak Plaza

Sterling, VA 20166

RE: Addition of SPID Field to LEAP Database

Dear Mr. Wiggins,

I understand that you will soon be testifying before the carrier representatives to make a case for having the alternate SPID field available in LEAP. As you know, this is code that specifies when a carrier has given or resold a ten-digit telephone number to a VoIP provider, MVNO, cable provider or telecom reseller.

I cannot tell you how much unnecessary investigative delay and wasted resources – both law enforcement's and communications carrier's – not having this information available in LEAP has already cost. In nearly every investigation where the registered carrier does not provide services directly to the customer, we wind up needlessly preparing and serving subpoenas, court orders, or search warrants on the wrong company, only to learn the customer is not the communication provider's that was served. Further, in life or death emergencies, this causes untold delay and inexcusable compromise to public safety.

LEAP does not currently give us this field. Its inclusion would immediately and measurably reduce the useless legal process, delay and wasted manpower described above. The addition of this information to the LEAP database would significantly benefit law enforcement, the public we serve, and each and every compliance office.

As a LEAP customer, the U.S. Marshals Service strongly supports this effort. Please contact me at 866-778-5378 ext. 7092 if there is any way our support can help accomplish this worthy and critical effort.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Lowenstein", written over a horizontal line.

Steven M. Lowenstein, Inspector & Legal Advisor
Investigative Operations Division
Technical Operations Group

From: Josh Landers [mailto:LandersJ@co.rockland.ny.us]
Sent: Friday, May 16, 2008 1:30 PM
To: Wiggins, Bobby
Subject: G/S J.K. Landers - Rockland County, NY District Attorney'sOffice

Please route to:

Mr. Bobby Wiggins
Director, Fiduciary Services
Program Manager-LEAP
NeuStar, Inc.

Greetings,

My name is Josh Landers and I serve as a member of the Office of the District Attorney of Rockland County - NY.

As a member of that office, I supervise applied and operational technologies including Court-Ordered Electronic Surveillance (ELSUR) and Subpoena Compliance with regard to telecommunications carriers.

As you may know, Rockland County is one of the several counties that surround the five boroughs of New York City.

The Office of the District Attorney conducts a significant number of ELSUR cases each year with respect to the activities of its Narcotics Task Force and its County Intelligence Center.

I wish to inform you at our office and the investigative groups that I supervise strongly support the proposal to populate the Neustar database Alternate SPID field with additional and more granular carrier information. Our groups can be spared hours of additional research time with the addition of this information. In cases where time is of the essence, the value of the additional information is self-evident.

We applaud Neustar's efforts to drive this useful even fundamental improvement forward. Please advise me if our members can bolster your efforts by any additional communication or participation.

Respectfully yours,

J.K. Landers

Group Supervisor Josh Landers
Office of the District Attorney
Rockland County, New York
NTF Applied Technologies Unit
1 South Main Street - Suite 500
New City, NY 10956

Reception Desk: (845) 638-5030
Mobile Number: (845) 629-5244
Fax: (845) 267-5100
E-mail: landersj@co.rockland.ny.us

From: Dawson, Andy [mailto:Andy.Dawson@montgomerycountymd.gov]
Sent: Friday, May 09, 2008 3:24 PM
To: Wiggins, Bobby
Subject: Request for Feedback

Mr. Wiggins: In response to your request for feedback, I would like to say that Neustar's LEAP product has significantly streamlined the portion of our telephone investigation process that pertains to proper carrier identification.

In the Montgomery County Police Department, LEAP is used by patrol officers, detectives, and at our Emergency Communications Center (ECC). All of our LEAP users have experienced a decrease in the amount of time it takes to identify the correct carrier for a given phone number. In the past, our personnel utilized www.fonefinder.net or www.telcodata.us in an attempt to learn the correct carrier. Since these websites are essentially operated by hobbyists, there was no guarantee of accurate information. After performing an initial inquiry on one of those websites, personnel who were aware of the manual IVR system would take the second step and call to see if their target number had been ported. In many cases, people weren't even aware that the manual IVR system existed. I can only imagine the number of phone calls and subpoenas that were misdirected to carriers, delaying the process of obtaining the required information to pursue investigations.

Now that a majority of our personnel have become familiar with LEAP, the inefficient, two-step process of identifying a carrier is streamlined into a single online inquiry. This has been especially helpful at ECC where supervisors are frequently talking on the phone and operating a computer simultaneously. They can determine the official carrier of record for a target number without interrupting a phone conversation with field personnel or command staff. Although I am not able to point to any specific examples, I'm certain that during a hostage/barricade or kidnapping situation, ECC will determine the correct carrier in a much more timely fashion than they would using a website and the manual IVR.

In the immediate future, law enforcement agencies still have a need for additional information. The evolution of the VoIP market provides new challenges to investigators. In the case of VoIP, it would be an added benefit to have access to Service Types and Alternate SPID's for assigned phone numbers. In fact, the ultimate desire of law enforcement would be to have online access to carrier information and current subscriber information with a single online inquiry. I realize this is a tall order that is outside the scope of Neustar's current capability, but it is a real issue for investigators as we continue to face the explosive growth of the communications industry and the challenges that come with it.

Thank you for the opportunity to comment on our current situation and thanks also for your continuing support of law enforcement throughout the country.

Sgt. Andy Dawson

Montgomery County Police Department

Special Investigations Division

2350 Research Blvd.

Rockville, MD 20850

301-840-2436