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April 22, 2010

**VIA ECFS**

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

**Re: Notice of Ex Parte Communication, WC Docket Nos. 07-149 & 09-109**

Dear Ms. Dortch:

I am writing today on behalf of the North American Portability Management LLC ("NAPM LLC") in response to the *ex parte* letter that Telcordia Technologies, Inc. ("Telcordia") filed with the Commission on April 12, 2010 (the "Telcordia Letter"). As an initial matter, the Telcordia Letter, apart from its unnecessarily bombastic tone and misportrayal of NAPM LLC's position and statements, is helpful because it seemingly narrows the scope of relief Telcordia now requests from the Commission. For example, Telcordia explains that its request is limited only to a subset of NAPM LLC decisions:

The vast majority of contract amendments are uncontroversial. The contract amendments at issue here are those affecting the core structure, scope, term and price of the contract. And reestablishing FCC decision-making and pre-effectiveness approval for that small subset of contract decisions is feasible . . . <sup>1</sup>

The NAPM LLC welcomes this apparent narrowing of the scope of Telcordia's request, and provides the following clarifications in an effort further to narrow the scope of issues pending before the Commission.<sup>2</sup>

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<sup>1</sup> Telcordia Letter at 5-6.

<sup>2</sup> In light of the purpose of this response, the NAPM LLC chooses not to address each inaccurate statement in the Telcordia Letter. As such, silence by the NAPM LLC regarding any of the statements or positions set forth in the Telcordia Letter should not be

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In light of the apparent narrowing of the scope of relief Telcordia is requesting and the responsive clarifications set forth below, the NAPM LLC also invites Telcordia to withdraw its Petition without prejudice so that all parties can focus on preparing and implementing a Request for Proposal (“RFP”) to replace the existing contract. The successful preparation and implementation of an RFP on a schedule that provides the winning bidder with sufficient time to test and fully deploy services prior to the expiration of the current contract will require focus by all interested parties in light of the magnitude of work that must be completed to achieve this result and the limited time in which to accomplish it. During this period, continued advocacy before the Commission would be unnecessary, serving merely as a burdensome distraction from the task at hand: preparing and implementing an RFP to replace the existing contract.<sup>3</sup>

**The NAPM LLC has always been accountable to the public via the Commission and NANC**

In the Telcordia Letter, Telcordia emphasizes its “belie[f] that NAPM [LLC] should be accountable to the public, via the Commission and NANC,” suggesting that this is not the case today.<sup>4</sup> However, the NAPM LLC has always been accountable to the public via the Commission and NANC.

Section 251(e)(1) of the Communications Act of 1934, as amended, (the “Act”) reinforces the Commission’s authority over matters relating to the administration of numbering resources by giving the agency exclusive jurisdiction over those portions of the North American Numbering Plan (“NANP”) that pertain to the United States.<sup>5</sup> This subsection also *requires* 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.”<sup>6</sup>

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interpreted as an admission by the NAPM LLC or as agreement by the NAPM LLC with such statements or positions.

<sup>3</sup> If the FCC granted Telcordia permission to withdraw its petition without prejudice, which the NAPM LLC would support, Telcordia would be free to refile at a later date if necessary.

<sup>4</sup> Telcordia Letter at 3.

<sup>5</sup> See 47 U.S.C. § 251(e)(1).

<sup>6</sup> *Id.* (“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.”) (emphasis added). This statutory mandate reflects Congressional intent that the Commission itself should not be burdened on a day-to-day basis with the administration of telecommunications numbering.

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The Commission complied with this statutory requirement by adopting the NANC's recommendations that:

- The NANC "provide general oversight of number portability administration, including oversight of the individual LLCs, subject to Commission review."<sup>7</sup>
- The LLCs "provide immediate oversight and management of the local number portability administrators."<sup>8</sup>

The sole reason behind the Commission's decision to grant this authority on an interim, rather than permanent, basis was to ensure that the LLCs treated all carriers fairly to ensure non-discriminatory access to LNP services.<sup>9</sup> Because the NAPM LLC unquestionably has ensured that all carriers have non-discriminatory access to LNP services, the NAPM LLC has requested that the Commission adopt, on a permanent basis, NANC's recommendation that the NAPM LLC provide immediate oversight and management of the LNP Administrator(s).<sup>10</sup>

Pursuant to the current delegation and oversight framework, all parties, including the Commission and the NANC, may attend the meetings of both the NAPM LLC and the NANC. In the course of negotiating and managing the contracts for LNP administration, including "immediate oversight and management" of the LNP administrator(s), the NAPM LLC must engage in confidential conversations that cannot be open to the general public. For example, the NAPM LLC must engage both current and potential LNP administrators, including Telcordia, in certain discussions that are subject to confidentiality restrictions. Similarly, NAPM LLC meetings regularly and routinely include privileged discussions with legal counsel regarding NAPM LLC business that necessarily must be limited to NAPM LLC Members in order to preserve the relevant privileges. During these confidential conversations, whether between the NAPM LLC and third parties or during NAPM LLC meetings, the public cannot participate, and the NAPM LLC cannot subsequently disclose the content of these confidential conversations to the public.<sup>11</sup> For this reason, the NAPM LLC must, from time-to-time, conduct meeting sessions that are open only to NAPM LLC Members so that proprietary issues subject to

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<sup>7</sup> *Telephone Number Portability*, Second Report and Order, 12 FCC Rcd 12281, 12345 ¶114 (1997).

<sup>8</sup> *Id.* In 1999, carriers merged the individual LLCs into a single entity: the NAPM LLC.

<sup>9</sup> *See Telephone Number Portability*, 12 FCC Rcd at 12347-50.

<sup>10</sup> NAPM LLC Ex Parte, Attachment at 13.

<sup>11</sup> Since NANC meetings are open to the public, the content of confidential conversations cannot be reported during these meetings. Similarly, the content of these confidential discussions cannot be disclosed during portions of the NAPM LLC meetings that are open to the public.

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confidentiality restrictions can be discussed by the entire NAPM LLC membership. However, the Commission and the NANC chair can participate in these confidential discussions, whether directly or indirectly through subsequent oral or written reports from the NAPM LLC regarding the confidential discussions.

In light of the confidentiality restrictions that necessarily impact the oversight and management of LNP administration, the public, including Telcordia, is unlikely to be aware of the full potential for oversight of the NAPM LLC by the Commission and the NANC or the specific actions taken in furtherance of this oversight. For example, the Commission traditionally has monitored contract amendments through the NANC Chair, who has been notified in advance of the negotiation of all major amendments, *including the amendments to which Telcordia objects*. As the NAPM LLC explained in its March 22, 2010 notice of an ex parte meeting with the Commission ("NAPM LLC Ex Parte Notice"), the NAPM LLC and the Commission are discussing additional means for ensuring that the agency has convenient access to all relevant information, including information about the NAPM LLC's intent to use an RFP process for negotiating the contract(s) for local number portability administration after expiration of the current contract with Neustar. Therefore, no further Commission action is necessary to permit effective oversight of the NAPM LLC by the agency or the NANC.

**The NAPM LLC intends to initiate an RFP process that would enable a new provider if selected, to replace Neustar at the expiration of the current contract in 2015.**

In the Telcordia Letter, Telcordia mischaracterizes the following statement from the NAPM LLC Ex Parte Notice:

We also discussed the intent of the NAPM LLC to initiate a Request for Proposal ("RFP") process that would enable a new provider, if selected, to replace Neustar at the expiration of the current contract in 2015. The NAPM LLC anticipates announcing a timeline for the RFP as early as the May 2010 meeting of the North American Numbering Council ("NANC") but no later than the December 2010 NANC meeting.<sup>12</sup>

As Telcordia is aware, the purpose of a notice regarding an ex parte meeting with the Commission is to provide an accurate summary of the issues discussed at that meeting in

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<sup>12</sup> NAPM LLC Ex Parte Notice at 2.

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accordance with the requirements of the Commission's rules.<sup>13</sup> The NAPM LLC Ex Parte Notice accurately summarizes the meeting between the NAPM LLC and the Commission. During the meeting, the Co-Chairs of the NAPM LLC could not express more than sincere intent to proceed with an RFP on the proposed timeline only because the NAPM LLC operates on a consensus basis. However, the wording of the NAPM LLC Ex Parte Notice does not reflect any hesitation by the Co-Chairs of the NAPM LLC to initiate an RFP process or doubt that an RFP process will in fact be initiated. For the sake of clarity, the NAPM LLC Co-Chairs believe the following statements to be accurate:

- The NAPM LLC will initiate an RFP process that would enable a new provider, if selected, to replace Neustar at the expiration of the current contract in 2015;
- The expected timeline for the RFP process will be announced at the May 2010 NANC meeting; and
- The current contract will not be extended.

The NAPM LLC Co-Chairs are not aware of any NAPM LLC members who oppose these actions, or even any specific circumstances that would prevent the actions from occurring. The NAPM LLC will notify the Commission and the NANC Chair if any obstacles that could prevent these actions from occurring subsequently arise.

**The "inseverability" clause does not prevent the Commission from taking any action within its authority.**

In the Telcordia Letter, Telcordia repeats its argument that the so-called "inseverability" clause:

prevents the FCC from modifying the contract for any reason – including voiding provisions for violations of FCC rules or public policy – without tripping the 'nuclear options' and invalidating the entire contract amendment.<sup>14</sup>

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<sup>13</sup> See 47 C.F.R. § 1.1200 *et seq.*

<sup>14</sup> Telcordia Letter at 3.

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It is difficult to understand why Telcordia believes that the Commission possesses the authority to modify one provision of the contract for violating the FCC's rules or public policy but somehow lacks the authority to amend the so-called "nuclear options" in the same contract, which Telcordia argues would negate the impact of modifying the other provision.<sup>15</sup>

In any event, the issue of the "inseverability" clause should be largely moot in light of Telcordia's clarification that its request specifically avoids disruption during the "transition to competition."<sup>16</sup> In support of this clarification, Telcordia explained that:

[i]f the Commission determines that the public interest would be served by maintaining some provisions of the number portability contract during the period while competitive bidding is conducted, it has full authority to tailor relief to meet the needs for number portability database administration with the current vendor on an interim basis. Once new contracts are in place, the existing contract would be terminated.<sup>17</sup>

Accordingly, Telcordia apparently has agreed that, in order to prevent disruption, the current contract should remain in place "while competitive bidding is conducted." The NAPM LLC agrees.

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<sup>15</sup> Telcordia apparently based its "Chicken Little" rhetoric and inaccurate claim that the NAPM LLC agrees with Telcordia about the impact of the "inseverability" clause on page 12 of the presentation attached to the NAPM LLC Ex Parte Letter. Page 12 simply reflects past statements by Telcordia about the impact of its Petition rather than constituting agreement by the NAPM LLC with Telcordia regarding the effect of the "inseverability" clause or the legal necessity for grant of the Telcordia Petition. Regardless of previous statements about the scope of Telcordia's request, the NAPM LLC welcomes the clarifications by Telcordia regarding the limited scope and limited impact intended by its Petition.

<sup>16</sup> See Telcordia Letter at 2. ("Telcordia's Request Specifically Avoids Disruption during Transition to Competition.").

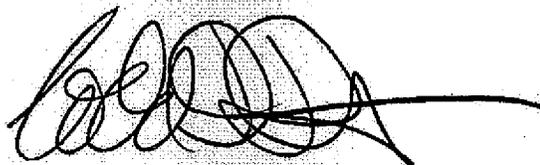
<sup>17</sup> *Id.*

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A copy of this letter is being filed in the above-referenced dockets. Please contact the undersigned if you have any questions or need additional information.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Todd D. Daubert', with a long horizontal flourish extending to the right.

Todd D. Daubert  
*Counsel for the NAPM LLC*

cc: Chairman Julius Genachowski  
Commissioner Michael J. Copps  
Commissioner Robert M. McDowell  
Commissioner Mignon Clyburn  
Commissioner Meredith Attwell Baker  
Austin Schlick  
Maureen Duignan  
Catherine Seidel  
Diane Griffin  
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