

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

In the Matter of)	
)	
Petition of Telcordia Technologies, Inc. to)	
Reform or Strike Amendment 70, to)	WC Docket No. 09-109
Institute a Competitive Bidding for Number)	
Portability Administration, and to End the)	
NAPM LLC's Interim Role in Number)	
Portability Administration Contract)	
)	
Telephone Number Portability)	CC Docket No. 95-116

REPLY COMMENTS OF THE NAPM LLC

The North American Portability Management LLC (the “NAPM LLC”) welcomes the nearly unanimous support for the joint proposal issued by the Chair of the North American Numbering Council (“NANC”) and the NAPM LLC regarding the selection of the next local number portability administrator (“LNPA”) to administer the Number Portability Administration Center/Service Management System (“NPAC/SMS”) (the “Proposal”).¹ Impressively, the Proposal, which reflects the careful thought and substantial work by the NANC Chair and the NAPM LLC, received the unanimous support of the entire NANC at the March 9, 2011 meeting, the significance of which should not be underestimated. Importantly, only one party, an interested vendor, requested substantial modifications to the Proposal, which the Commission should reject for the reasons set forth below.² Therefore, the NAPM LLC respectfully requests the Commission immediately endorse the Proposal without modification since time is of the essence and modifications could inadvertently unravel the impressive consensus that the Proposal, in its current form, reflects.

¹ See NANC/NAPM LLC Consensus Proposal for Clarification of the FCC’s Rules Regarding the LNPA Selection Process, filed February 14, 2011.

² Although the National Association of State Utility Consumer Advocates (“NASUCA”) “questioned the advisability of the FCC authorizing the NAPM to ‘negotiate a contract(s) with the selected vendor(s) upon final approval of the vendor(s),’ NASUCA’s concern is based upon a fundamental, and crucial, misunderstanding of the LNPA selection and contracting process, which is also addressed below. See NASUCA Comments at 7.

Since its introduction in 1996, local number portability (“LNP”) has been an unqualified success, facilitating competition among telecommunications service providers in a manner that benefits consumers. This success unquestionably is due in large part to the ongoing efforts of the NAPM LLC and the NANC. As the Commission correctly recognized in its Order, the NANC and the NAPM LLC have developed considerable expertise in overseeing and managing the LNP contract for the past decade.³ The Proposal in its current form accurately reflects the relative strengths of the two organizations and assigns responsibility accordingly. We urge the Commission to avoid making any substantive changes to the endorsed process at the eleventh hour, particularly when the recommended changes would waste the relative expertise of the parties, disregard the substantial time and energy of numerous industry experts who have worked hard to reach consensus, and create duplicative layers of bureaucracy that would further slow the LNPA selection process without adding any substantial value.

I. THE PROPOSAL REFLECTS THE STATUTORY AND HISTORICAL STRUCTURE FOR LNPA SELECTION AND OVERSIGHT, AND THERE IS NO JUSTIFICATION FOR SIGNIFICANT MODIFICATIONS

The Proposal not only reflects a successful balancing of the interests of the NANC members and the NAPM LLC, but it also hews closely to the process used to select the original LNPAs following the 1996 Telephone Number Portability Order, as the Order recognizes.⁴ Unfortunately, some parties continue to misunderstand the nature of the LNPA vendor contracts and the relationship between the LNPA(s) and the carrier customers, as the comments of NASUCA demonstrate. The NAPM LLC welcomes the opportunity to clarify the relationship

³ *Petition of Telcordia Technologies, Inc. to Reform or Strike Amendment 70, to Institute Competitive Bidding for Number Portability Administration and to End the NAPM LLC’s Interim Role in Number Portability Administration Contract; Telephone Number Portability*; WC Docket No. 09-109; CC Docket No. 95-116, ¶ 5 (rel. Mar. 8, 2011) (“Order”).

⁴ *Id.*; see *Telephone Number Portability*, CC Docket No, 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352 (1996) (“First LNP Order”).

between the NAPM LLC and the LNPA(s), which should alleviate the concern expressed by NASUCA and further confirm why the Commission should adopt the Joint Proposal in its current form.

In the original LNPA selection process initiated in 1996, as in the Proposal, the NANC was directed to recommend to the Commission one or more “independent, non-governmental entities, not aligned with any particular telecommunications segment to serve as LNPA(s).”⁵ In response, the NANC established a working group, which subsequently recommended to the Commission that the non-profit industry LLCs -- now the NAPM LLC -- select and oversee the LNPA, which the Commission then approved.⁶ Thus, since the beginning, the pre-cursors of the NAPM LLC contracted for the creation and selection of the LNPA and LNP services pursuant to the Communications Act of 1934, as amended, (the “Act”) and the Commission’s implementing orders.

Carriers implemented LNP in response to a regulatory mandate. However, as is the case with the vast majority of regulatory mandates, individual carriers are themselves responsible for purchasing the goods and services necessary to comply with the portability mandate. In light of the nature of LNP, carriers must cooperate to implement common infrastructure and services in order to implement LNP. For this reason, the NAPM LLC negotiates contracts with LNPA(s) on behalf of all carriers. Importantly, the contracts are between private, non-governmental vendors and the NAPM LLC negotiating on behalf of all telecommunications carriers, which, by statutory mandate, share the costs of portability “on a competitively neutral basis.”⁷ The NAPM LLC itself -- membership in which is open to all telecommunications carriers -- is funded

⁵ 47 CFR § 52.25.

⁶ Order at 4; *Telephone Number Portability*, CC Docket No, 95-116, Second Report and Order, 12 FCC Rcd 1228, 1297-98 (1996) (“Second LNP Order”).

⁷ 47 U.S.C. § 251(e)(2).

entirely by membership dues from its carrier members. Consequently, no government funds are spent as a result of the LNPA contract. Nor is the LNPA selection process and the LNPA contract a government procurement. Indeed, no governmental entity purchases services from, or provides services pursuant to, the LNPA contract.⁸

The carriers (who collectively are the sole customers for the LNPA services) are in the best position to know the technical and practical requirements for LNPA services, as well as the financial impact of the various proposals. The LNP system is exceedingly complex, so the LNPA selection process should rely on the expertise of the NAPM LLC and the NANC who understand and who have successfully managed the system for more than a decade. LNPA services do not generate profits for carriers: carriers do not benefit from higher LNPA rates.⁹ Rather, LNPA services reflect an expense that reduces profit margins. As such, carriers naturally have every incentive to negotiate for the highest quality services at the best possible costs, recognizing that the best costs reflect both the rates for services as well as the costs carriers must themselves incur to receive services pursuant to the contract(s).

LNP is integral to the business of all carriers throughout the country. Billions of dollars annually depend upon the successful management of the LNP system. Additionally, evolving technologies for wireless (*e.g.*, Long Term Evolution) and wireline (*e.g.*, IP migration) make the continued astute management of LNP particularly important. Although carriers have every incentive to negotiate for the highest quality services at the best possible costs, carriers could seek to gain competitive advantage by structuring the contracts with LNPA(s) in a way that shifts costs to competitors. In recognition of this fact, oversight by the FCC and the NANC of the

⁸ Thus, NASUCA's proposal that "a governmental entity should approve and be involved with the expenditure of federal funding and also with the administration of telephone number resources[]" is misplaced. *See* NASUCA Comments at 7.

⁹ In the First LNP Order, the Commission ruled that carriers could only recover the incremental costs of implementing number portability. First LNP Order, ¶¶ 132, 135.

LNPA selection and contracting process have always focused primarily and, as a practical matter since the original delegation of authority, nearly exclusively on the issue of competitive neutrality to ensure that no industry segment exercises its influence through the NAPM LLC structure to the detriment of any other industry segment.¹⁰

The statute does not instruct the FCC, and the FCC has never instructed the NANC, to take any specific measures to assist any specific LNPA vendor or type of vendors. Moreover, efforts to supplant non-governmental customers from the negotiation process for a contract between such customers and a non-governmental vendor, pursuant to which no governmental funds are expended, are entirely inappropriate.¹¹ It is particularly inappropriate here because LNP has been an unqualified success and there is no factual or legal basis for preventing, or even restricting, non-governmental carriers from negotiating contracts pursuant to which they purchase non-telecommunications services from non-governmental vendors.

General oversight certainly is appropriate, and consistent with the Act, for the purpose of ensuring that no individual carrier(s) or classes of carriers discriminate against other carriers. However, oversight regarding broader issues where there is no incentive for carriers to engage in the harmful behavior for which oversight allegedly is necessary (*e.g.*, overpaying for LNPA services) would be entirely inappropriate, particularly since there is no statutory mandate for expansive oversight of these additional issues. The structure for oversight should reflect the narrow oversight purposes set forth in the Act as well as the historical oversight structure rather than expansive and unnecessary interference with private contract(s) urged by Telcordia.

¹⁰ See, *e.g.*, First LNP Order, ¶ 131 (expressing concern that carriers would seek to use number portability to gain a competitive advantage vis-à-vis their competitors, and stated that, consistent with the Section 251(e), the costs of number portability be borne by each carrier on a competitively neutral basis).

¹¹ See NASUCA Comments at 7; Telcordia Technologies, Inc. Comments at 2, Appendix A (“Telcordia Comments”).

In light of the foregoing, the FCC has approved, consistent with the Act, delegation of LNPA contracting responsibilities to the NAPM LLC and exercised its oversight responsibilities primarily through the NANC. The existing arrangement has been extremely successful in facilitating competitive choice and adapting to increasing technological complexity. Given the overwhelming, and nearly unprecedented, satisfaction with the current NAPM LLC structure for procuring LNPA services, there is no reason to modify the current structure of the Proposal.

II. THE PROPOSAL REFLECTS THE STATUTORY AND HISTORICAL STRUCTURE FOR THE NANC, AND THERE IS NO JUSTIFICATION FOR SIGNIFICANT MODIFICATIONS

The NANC is a Federal Advisory Committee whose purpose is “to provide to the Commission advice and recommendations, *reached through consensus*, to foster efficient and impartial number administration as telecommunications competition emerges.”¹² The NANC, including its subcommittees and working groups, operates on a consensus basis, and the role of the NANC Chair is to facilitate consensus. To the extent that any NANC subcommittee or working group is unable to reach consensus within the subcommittee or working group, the issue can be elevated to the NANC, and the Chair can seek to facilitate consensus. To the extent the NANC is unable to reach consensus, or any NANC member disagrees with a finding of consensus by the Chair, the issue can be raised to the Commission. Moreover, as set forth in the NANC Charter, the NANC can only advise the Commission, rather than make binding decisions on the Commission’s behalf.

The current NANC structure has been overwhelmingly successful in providing recommendations to the Commission on a broad range of issues, and no party has identified any reason for changing the role of the NANC Chair by prohibiting the NANC, or any subcommittee or working group, from continuing to operate on a consensus basis in a manner that has

¹² *Administration of the North American Numbering Plan*, CC Docket No. 92-237, Report and Order, 11 FCC Rcd 2588, ¶ 46 (1995).

consistently delivered results on the issues relating to telephone number administration. Similarly, no party has identified any principled reason to deviate from the proposed structure of the LNPA Selection Working Group (“SWG”), wherein the NANC oversees the selection process, administered by the NAPM LLC’s Future of the Number Portability Administration Center Subcommittee (“FoNPAC”), to recommend the next LNPA.

NANC participation in the oversight process should be open to all individuals who meet the requirements set forth in the Proposal (“Eligible Party”), agree to a mutual non-disclosure agreement and certify that they have no conflicts of interest. Permitting broad participation by any Eligible Party who can agree to confidentiality and certify that they have no conflicts of interest is much more transparent and conducive of consensus than permitting the Chair to select a subset of Eligible Parties to serve on the SWG, which could lead to unnecessary disputes and criticism of the Chair. The Proposal, as written, reflects the proper balance between openness to all NANC members and protection against disclosures of confidential information or participation by individuals with conflicts of interest.

III. NEITHER THE FCC NOR THE NANC SHOULD PERMIT ANY POTENTIAL VENDOR TO EXERCISE TOO MUCH INFLUENCE OVER THE RFP PROCESS

Neither the Commission nor the NANC should permit any potential vendor to exercise too much influence over the LNPA selection process. Every vendor has the incentive to manipulate the system or recommend changes that advantage itself over its competitors regardless of the impact on the customers -- the carriers -- or the subscribers to services provided by the carriers. Any effort by a vendor to change or influence the LNPA selection process increases the appearance of impropriety and the likelihood of subsequent disputes. For example, to the extent a potential vendor recommends that a specific party becomes one of the Chairs of the SWG, the public may question the propriety of accepting that recommendation due to the appearance of impropriety, even if the same party would have been selected by the SWG in the

absence of the vendor's recommendation. Indeed, potential vendors typically have little to no say in the structure for reviewing RFPs for contracts with non-governmental entities, particularly since this type of participation could give the advising vendors an unfair advantage over other potential bidders, thereby undermining one of the fundamental reasons for conducting an RFP. Rather, the RFP should be designed solely from the needs of the customer, in this case the NAPM LLC, and the process should be designed to facilitate selection of the vendor who best serves the customers' needs. In light of the fact that the primary focus of NANC oversight has historically been directed at ensuring that no carriers discriminate against other carriers with regard to number portability practices, vendors presumably should have little insight into these oversight issues since vendors, by definition, cannot be carriers.

IV. TIME IS OF THE ESSENCE

The successful preparation and implementation of the LNPA selection process on a timeframe that allows the winning bidder sufficient time to test and deploy services prior to the expiration of the current contract, which is scheduled to expire on June 30, 2015 (rather than December 31, 2015 as stated in the Order)¹³ will require focus by all interested parties. The selection process for, and transition process to, a new LNPA(s) before the current contract expires is an extensive undertaking that will require the NAPM LLC's members to contribute substantial resources in terms of personnel, time, and money. Nearly a year ago, and prior to several intervening delays, the NAPM LLC proposed a timeline that was as condensed as the members believed possible in terms of available personnel, time, and money.¹⁴ That timeline

¹³ Order, ¶ 4.

¹⁴ See Letter from Todd D. Daubert, Counsel for the NAPM LLC, to Marlene Dortch, Secretary of the FCC, WC Docket Nos. 07-149; 09-109 (May 21, 2010).

proposed that the RFP creation process be well underway by this date. However, this already aggressive timeline has been substantially and repeatedly delayed.¹⁵

The FCC should not create the potential for further delay or otherwise introduce steps that unnecessarily increase the time necessary to complete the RFP. The effort required to successfully implement this transition cannot be understated. Now that the Proposal has set forth an administratively efficient means with which to proceed, the FCC should adopt the Proposal in its current form and as soon as possible. The addition of requirements or modifications to the agreed-upon Proposal will only serve to distract the parties from addressing the true task at hand: carefully preparing and smoothly implementing the LNPA selection process in order to replace the existing LNP contract. Accordingly, the NAPM LLC recommends that the Commission approve the Proposal as soon as possible and in its current form.

V. THE COMMISSION SHOULD REJECT TELCORDIA'S PROPOSED REWRITE

Telcordia, a potential vendor, has recommended several changes to the Proposal, which received the unanimous consensus support of the NANC. In addition to the risks associated with unilaterally changing a consensus recommendation, particularly when the changes are recommended by an interested potential vendor, the recommended changes are unnecessary and would serve merely to introduce additional layers of bureaucracy and the potential for additional delay. For example, the Proposal's procedure for fostering broad participation in the SWG by all eligible parties is far more inclusive and fair than Telcordia's suggestion that the NANC Chair hand-pick certain NANC members, but not others, to serve on the SWG.¹⁶ Likewise, there is no reason for the Chair to hand-pick one or more of the Chairs for the SWG rather than letting the SWG develop their own recommendations for the Chairs, who must then be endorsed by the

¹⁵ *See id.* For example, in August, 2010, the NAPM LLC expressed its intention to release a Request for Information ("RFI") in the fourth quarter of 2010 along with information relating to pre-qualifying for the RFI/RFP process, which has yet to occur.

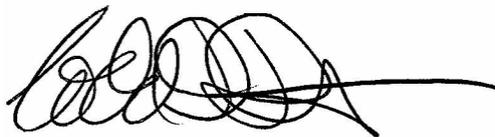
¹⁶ Telcordia Comments at 1-2, Appendix A § 2(e)

NANC, particularly when both procedures will likely lead to the same results in terms of who actually is selected as Chairpersons.¹⁷ Since the Proposal culminates in a recommendation by the full NANC to the Commission, Telcordia's insertion of additional bureaucratic steps is unnecessary and will only create opportunities for additional delay.¹⁸ Finally, Telcordia's recommendation that the Commission attempt to regulate internal procedures and subcommittees of the NAPM LLC, and limit the NAPM LLC's role in negotiating a contract to which it is a party, is entirely inappropriate and beyond the authority of the Commission.¹⁹

CONCLUSION

For the reasons set forth above, the NAPM LLC respectfully requests the Commission to immediately endorse the Proposal without modification.

Respectfully submitted,



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Date: March 29, 2011

¹⁷ Charter for the North American Numbering Council, § 13 (requiring the NANC Chair to appoint chairs of subcommittees).

¹⁸ See e.g., Telcordia Comments, Appendix A § 5.

¹⁹ See, e.g., *id.*, Appendix A §§ 3, 5, 6.