WILTSHIRE & GRANNIS LLP

March 20, 2012

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

RE: *Petition of Telcordia Technologies, Inc. to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration*, and *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 Nos. 07-149 & 09-109

Telephone Number Portability, WC Docket No. 95-116

Dear Ms. Dortch:

On behalf of Telcordia Technologies, Inc. ("Telcordia"),[1] I write to respond to NeuStar, Inc.'s November 22, 2011 letter and the enclosed report by Professor Scott E. Masten of the University of Michigan, Ross School of Business ("the Masten Report"). Telcordia is pleased to be participating in the ongoing Local Number Portability Administrator selection process and thanks the Selection Working Group and the NAPM Future of Number Portability Advisory Committee for the work they are doing, and commends the Commission for putting in place a competitive bidding process with substantial oversight from entities whose principal concerns are consumers and the public interest.

Neither Professor Rogerson nor Telcordia disputes that some economies of scale are present in NPAC administration. The question is not whether some such economies exist, but whether the potential benefits that come from those economies of scale outweigh the potential benefits that come from the presence of multiple administrators during the course of the contract. The Masten Report hypothesizes that economies of scale in NPAC Administration are so significant across the seven regions that a single-vendor solution is the only economically efficient option. But this unverified claim assumes that initial start-up costs for a new entrant are so large as a proportion of total costs that no benefit from benchmarking or competition could offset or exceed them. Nothing in the report supports such an assumption. Indeed, the report provides no evidence about any costs at all. If the NAPM and SWG were to consider structuring a procurement to preclude multiple Administrators (which they should not do), such claims that economies of scale necessitate a single national provider should be evaluated in the same manner

[1] On January 12, 2012, Telcordia's acquisition by Ericsson was completed.

as efficiency claims in merger analysis: a single provider must be necessary to achieve the asserted efficiencies, the asserted efficiencies must be verifiable, and they must outweigh the benefits of having multiple providers.[2] Professor Masten's report comes nowhere near meeting this test.

Here, it also must be recognized that the NPAC contract(s) will likely be followed by numerous change orders – the pricing of which will need to be negotiated during the term of the contract. As Professor Masten noted, the current NPAC contract includes over 40 change orders. The costs for these changes were significant, with fifteen above $1 million – some by tens of millions of dollars. They covered features industry sought or accepted, or features the FCC required. These features were unique to the NPAC, permitting no direct benchmarking because the current system has only one Administrator. However, the FCC's experience with implementing number pooling in 2000-2001 shows that benchmarking can lead to significant savings. Number pooling involves a number administration component and an NPAC component. Neustar submitted a bid to be the sole-source national administrator for number pooling. Telcordia objected. The FCC then required a competitive bid. Neustar won the competitive bid, but with a price far below its initial quote. In contrast, the much costlier NPAC portion of number pooling was not competitively bid, nor could it have been benchmarked because there was only one NPAC Administrator. In sum, the pressure of competitive bidding led to significant cost savings for the number administration portion of number pooling. Competitive bidding or, with multiple NPAC Administrators, benchmarking could have yielded dramatic savings for the NPAC component.

These types of circumstances, as well as the desire to ensure continued good performance by the chosen vendors and to maintain a pool of multiple bidders for future procurements, frequently leads procuring entities to select multiple providers, even when a single vendor might initially provide a lower initial price on the current procurement.

As Professor Rogerson describes in his study, a key benefit of having more than one NPAC Administrator is the ability to compare performance and, when presented with potential change orders, also to compare potential solutions and prices. This is referred to as "benchmarking." The Masten Report attempts to dismiss "benchmarking" by arguing that differences between the regions, such as "region size (geographic and demographic); porting transaction frequency; carrier numbers, characteristics, and concentration; costs and reliability of electric power service; and labor, materials, and facilities costs" "could affect provider performance in ways that would make performance comparisons problematic." First, we submit that there is no reason for the Commission to place any weight at all on Professor Masten's

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[2] *See*, *e.g.*, *FTC v. Heinz*, 246 F.2d 720-21; *DOJ/FTC Horizontal Merger Guidelines* § 10; *Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, 23 FCC Rcd. 12,348, 12,383 ¶ 75, 12,392-93 ¶ 103 (2008); *Applications of Atlantic Tele-Network, Inc. and Cellco Partnership D/B/A Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations*, 25 FCC Rcd. 3763, 3781 ¶¶ 39-40 (2008); *AT&T-Centennial Order*, 24 FCC Rcd. 13,915, 13,954 ¶ 90 (2009); *Cingular-AT&T Wireless Order*, 19 FCC Rcd. 21,522, 21,600 ¶¶ 205-206 (2004); *SBC-AT&T Order*, 20 FCC Rcd. 18,290, 18,390-91 ¶¶ 201-02 (2005); *EchoStar-DirecTV HDO*, 17 FCC Rcd. 20,559, 20,639 ¶191 (2002); *Antitrust Law Developments (Sixth)* at 362 ("[T]o date no decision has relied on efficiencies in rejecting a challenge to an otherwise illegal merger." (citations omitted)).

unsupported speculation that differences between the regions might be too large for comparisons between regions to provide any relevant information. The Commission and its expert staff can make its own evaluation of whether or not having different cost estimates from two different regional providers would generally provide it with additional useful information or not. For example, suppose that the country was divided into two regions and the provider in one region states that it can implement a change order at a 30% lower price than the provider in the other region. It is hard to believe a responsible procurement official would find this information to be completely irrelevant. Yet this is what the Masten report hypothesizes. We believe that the Commission's own expert staff will conclude that being provided with independent cost estimates or feasibility reports from two different providers in two different regions generally will provide procurement officials with significant valuable extra information. This is both because differences between the regions relevant to determining the cost of change orders will be often be small and because it will often be possible to take any relevant cost differences into account when comparing two estimates from two different regions. Second, the Masten report ignores the fact that the FONPAC, SWG and FCC can draw the regions so as to maximize similarities – for which there would be significant latitude given that there are currently seven regions that could be consolidated into as few as two. Third, it ignores the fact that change orders are rarely presented to the Administrator as a finished set of requirements. The usual process is that the Local Number Portability Working Group (LNPA-WG) discusses with the Administrator the functionality that it is seeking and has interactive discussions. During this process, the LNPA-WG and NANC would have the benefit of two sets of ideas on how best to implement a new requirement.

The Masten Report also argues that to the extent services are standardized to reduce the transaction costs of having multiple providers, the value of multiple providers in promoting innovation will be reduced. Masten Report at 18. This ignores the high degree of standardization today, the fact that innovations can occur in the specification development process, and the potential for NPAC services to be combined with other services, should that be permitted by the FCC. In the current system, messaging interfaces and the overall porting process are the same across all regions. With multiple NPAC Administrators, that need not change. However, multiple Administrators will lead to greater generation of ideas and approaches for new features, simply because there will be two entities generating ideas that the industry, through the LNPA-WG and NANC, can then decide to accept or reject. Furthermore, as the Commission and NANC are well aware, there is currently a dispute as to whether the NPAC can include functionalities other than the routing of calls using ported NANPA numbers. If Administrators are permitted to use their NPAC databases to deliver ENUM services or other IP-related services, this could be a substantial area for innovation around the combination of NPAC and non-NPAC services.

Recent feature improvements in the NPAC also show the value of the continued competitive threat that multiple NPACs would provide. Since Telcordia began its efforts to compete for the NPAC contract, the incumbent has added a series of additional features, including an improved GUI interface, and begun examining additional interface and operations improvements. These improvements were not pursued by the incumbent until it was clear that competitive pressure was being faced with the current procurement.

Telcordia believes the record in this proceeding demonstrates the importance of these issues to industry and, as the ultimate payor, to consumers. Moreover, it underscores the role the Selection Working Group plays as the voice of NANC members and the public they represent, who are not represented in the NAPM LLC, which has administered the NPAC Administrator contract for the last 14 years. The NANC, through the Selection Working Group, and the FCC should design the RFP process to ensure that vendor responses provide real, substantive information about the vital issues including ongoing competitive contract changes, benchmarking, and availability of a second vendor for this critical service. One way to do so is to require responses on a region-by-region basis, not simply a national basis. Such a design will also determine the economies of scale impacts. Another method is to design an RFP scoring system that will assign a value for the benefits (*e.g.*, in reduced pricing for change orders) over the course of the contract of having multiple vendors. Thus, a single provider bid would have to beat a multiple provider bid by that amount (or, as another example, by a specific, fixed percentage) in order to be selected. Obtaining the needed data from prospective vendors through the RFP process is the way to assure that the best selection can be made that provide the benefits of competition going forward.

A copy of this letter is being filed in the above-captioned dockets.

Sincerely,

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