

**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	)	WC Docket No. 09-109
	)	
	)	WC Docket No. 07-149
	)	
Telephone Number Portability	)	CC Docket No. 95-116

**COMMENTS OF THE NAPM LLC**

The North American Portability Management LLC (the “NAPM LLC”) files these comments in support of the LNPA procurement documents as currently drafted, and respectfully urges the Wireline Competition Bureau (the “Bureau”) to adopt them without modification as final for release by the NAPM LLC as soon as possible.<sup>1</sup> The Request for Proposal (“RFP”), Technical Requirements Document (“TRD”), and Vendor Qualification Survey (“VQS”) (collectively, the “Procurement Documents”) reflect several months of careful thought and hard work by the Future of the Number Portability Administration Center Subcommittee of the NAPM LLC (“FoNPAC”) and the Selection Working Group (“SWG”) of the North American Numbering Council (“NANC”) in accordance with the procedures adopted by the Bureau over a year ago.<sup>2</sup> The consensus support for the Procurement Documents that has developed as a result of the integrity of, and cooperation between, the FoNPAC and the SWG speaks volumes about the thoroughness and quality of the work, which serves the interests of consumers, the industry as a whole, and the Federal Communications Commission (“FCC” or Commission”) itself. The

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<sup>1</sup> *Wireline Competition Bureau Seeks Comments on Procurement Documents for the Local Number Portability (LNP) Administrator Contract*, Pleading Cycle Established, WC Docket Nos. 09-109 & 07-149; CC Docket No. 95-116, DA 12-1333 (rel. Aug. 13, 2012).

<sup>2</sup> *Petition of Telcordia Technologies, Inc. to Reform or Strike Amendment 70*, Order, DA 11-883 (May 16, 2011) (“2011 LNP Order”).

NAPM LLC applauds this joint effort, and respectfully urges the Bureau not to disrupt the consensus or cause further delay by unnecessarily modifying the Procurement Documents.

The remaining time available for completing the LNPA selection process without extending the current contract is exceedingly tight. If finalized and released promptly, the Procurement Documents as currently written would facilitate successful completion of the LNPA selection process, including system development, testing and deployment of services by the winning bidder(s) before the current LNPA contract expires on June 30, 2015. In order to facilitate the Commission's prompt consideration and approval of the Procurement Documents without further amendment or delay, the NAPM LLC files these comments to address the issues raised by Ericsson, Inc. ("Telcordia") in its recent *ex parte* filing.<sup>3</sup>

#### **I. THE PROCUREMENT DOCUMENTS REFLECT ESTABLISHED FCC PROCEDURES FOR COMPETITIVE BIDDING PROCESSES**

The Procurement Documents hew closely to the process used to select the LNPA(s) following the 1996 Telephone Number Portability Order<sup>4</sup> and contain provisions that are identical in function to those used by the FCC in other procurement proceedings. The changes Telcordia now requests would represent an unprecedented and unjustifiable departure from the FCC's rules and the well-established bidding and neutrality provisions that have been consistently used in procurements over which the agency has jurisdiction. The introduction of untested bureaucracy and "cure periods" merely to permit an interested party that otherwise may

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<sup>3</sup> See Letter from John T. Nakahata, Counsel to Telcordia Technologies, Inc., to Marlene Dortch, Secretary, FCC, WC Docket Nos. 09-109 & 07-149; CC Docket No. 95-116 (Aug. 30, 2012) ("*Telcordia Ex Parte*"). Comcast Corporation and its affiliates ("Comcast") support these comments to the extent they oppose the arguments set forth in the *Telcordia Ex Parte*. As outlined in its separately-filed comments, Comcast does not, however, support the Procurement Documents as currently drafted to the extent that these documents do not contemplate a peered NPAC architecture. The NAPM LLC has not taken a position on a peered NPAC architecture.

<sup>4</sup> *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*").

not be willing or able to meet the long-standing and proven neutrality requirements would unnecessarily interfere with the ability of the FoNPAC, the SWG, and the NANC to recommend, and the FCC to select, the LNPA(s) that best serve the interests of consumers, the industry as a whole and the FCC itself. The changes Telcordia requests would also significantly increase the risk of bidding disputes and subsequent litigation.

The *Telcordia Ex Parte* incorrectly suggests that the neutrality procedures and requirements of the Procurement Documents lack sufficient clarity and that the neutrality requirement should not apply to subcontractors.<sup>5</sup> As an initial matter, the introduction of the duplicative layers of bureaucracy associated with Telcordia's proposed secondary neutrality review, whether operated in parallel with other vendor evaluations or not, would delay the LNPA selection process – and likely require an extension of the current contract – without any corresponding benefit. The vendor selection process has already been the focus of much careful attention by the Commission, the Bureau, the NANC, the NAPM LLC, and interested parties. The Bureau's resulting *2011 LNP Order* clearly describes the LNPA selection process and the responsibilities of each of the respective parties in accord with the FCC's rules and the relative expertise of various participants.<sup>6</sup> Telcordia has not provided any justification for revisiting the sound decisions that the Bureau made much earlier in this proceeding based on long-standing FCC rules and practices, particularly since the substantive changes requested by Telcordia would require further proceedings to change the LNPA selection process and amend the FCC's rules.

Equally as important, however, is the fact that the Procurement Documents, as currently written, faithfully reflect Section 55.21 of Commission's Rules, which requires each LNPA to be “an independent, non-governmental entity, not aligned with any particular telecommunications

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<sup>5</sup> See *Telcordia Ex Parte* at 2.

<sup>6</sup> See *2011 LNP Order*, Attachment A (setting forth a detailed summary of the Bureau-approved LNPA selection process).

industry segment.”<sup>7</sup> This requirement has always applied equally to the primary bidder and all subcontractors, because, as the Commission correctly noted in the *First LNP Order*, non-impartial subcontractors could leverage their financial relationship with the LNPA to gain an unfair competitive advantage.<sup>8</sup> Given the competitive sensitivity of local number portability, the FCC has long recognized correctly that the LNPA(s) must always be even-handed, impartial, and nondiscriminatory.<sup>9</sup> Indeed, absolute neutrality of both the LNPA and all of its subcontractors has been explicitly required since the *First LNP Order*’s finding that each LNPA must “ensure[] the equal treatment of all carriers and avoid[] any appearance of impropriety or anti-competitive conduct.”<sup>10</sup> For this reason, the neutrality requirements have always applied to vendors and subcontractors, and LNPA RFPs have always required bidders to certify that they meet the neutrality requirements when they submit their bids. For example, the 1996 RFP for West Coast Portability Services provided in relevant part as follows:

The Primary Vendor must demonstrate an understanding, willingness, and ability to implement policies and procedures that will ensure evenhanded treatment of all carriers, **and certification that the Primary Vendor and Sub-Contractor(s), if any, shall comply with the neutrality provisions of Section 1.3.4. of this RFP, at all times.**<sup>11</sup>

The FCC similarly has applied neutrality requirements to both the prime bidder and any underlying subcontractors and consultants in other contexts. For example, in FCC Solicitation No. SOL06000004, the Commission required that any contractor bidding for Pooling Administration Services submit “[e]vidence, as set out in relevant sections of this Request for

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<sup>7</sup> 47 C.F.R. § 52.21; *accord 2011 LNP Order* at ¶ 2.

<sup>8</sup> *First LNP Order* at ¶¶ 89, 92.

<sup>9</sup> *Id.* at ¶ 92.

<sup>10</sup> *Id.*; *In the Matter of Telephone Number Portability*, Second Report and Order, 12 FCC Rcd 12281 at ¶¶ 122, 127 (1997).

<sup>11</sup> *See, e.g.*, West Coast Portability Services, LLC’s Request for Proposal at § 1.3.1.3 (emphasis added); *see also* Request for Proposal for Number Portability Administration System/Service Management System (NPAC/SMS) in the US West Region at § 1.4 (September 16, 1996).

Proposals (RFP), **that the subcontractor meets all applicable neutrality requirements.**<sup>12</sup>

With respect to Universal Service Fund administration, the FCC similarly required that:

the USF Administrator, as well as its directors, officers, employees, **contractors, subcontractors, consultants, agents, and all other representatives** shall avoid any organizational or personal conflicts of interest or the appearance of a conflict of interest in the administration of the USF and the operations of the USF Administrator.<sup>13</sup>

As these examples illustrate, the neutrality requirements in the Procurement Documents are fully consistent with, and required by, the FCC's well-established and consistently applied impartiality and neutrality requirements.<sup>14</sup>

The FCC should not now, in the eleventh hour, introduce novel mechanisms and impose additional bureaucratic layers to the LNPA selection process or deviate from the Commission's long-held neutrality requirements. Modifying the Procurement Documents in this manner would serve only to further delay the RFP process without adding any substantial value.

## **II. THE REQUIRED NEUTRALITY CERTIFICATIONS AND THE EXISTING CONFIDENTIALITY PROTECTIONS ARE APPROPRIATE**

The NAPM LLC respectfully urges the Bureau to adopt the proposed neutrality certifications and confidentiality provisions as currently written. Although the *Telcordia Ex Parte* expresses concern with the vendor neutrality certification set forth in the VQS and the confidentiality provisions of the Procurement Documents, Telcordia's concerns are based on a misreading of the requirements, which more than adequately address their concerns as written.<sup>15</sup>

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<sup>12</sup> See Request for Proposal for Pooling Administration Services for the Federal Communications Commission, Solicitation No. SOL06000004 (emphasis added).

<sup>13</sup> Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company at IV.A.2 (emphasis added).

<sup>14</sup> See also, e.g., FCC Solicitation No. FCC12R0007 at H.3 (applying confidentiality provision to “[t]he Contractor and any of its personnel assigned to this contract, **including any consultants, subcontractors or other representatives.**”)(emphasis added).

<sup>15</sup> *Telcordia Ex Parte* at 2-3.

Contrary to Telcordia's suggestions, the existing requirements seek to ensure that each prospective RFP vendor ("Respondent") is a neutral party eligible to serve as an LNPA and in no way compels any party to provide trade secrets or other sensitive information that would not be afforded confidentiality protections.

First, the VQS does not require Respondents to submit information about "all other contractual relationships in which they may be involved" as Telcordia inaccurately claims. Instead, Section 3.4 of the VQS merely restates the requirement that the LNPA be a "neutral" party, as required by the FCC Rules and LNP Orders discussed above, while Section 3.5 requires each Respondent to conduct an independent Neutrality Audit and submit a legal opinion substantiating that the Respondent complies with the Commission's neutrality requirements. Nothing about this requirement compels a Respondent to disclose the substance of otherwise protected agreements, or even to file them along with the legal opinion. Rather, the VQS merely requires that the Respondent conduct an internal, non-public neutrality audit of those agreements and provide an written legal opinion substantiating the Respondent's status as a neutral third party, consistent with the Commission's established neutrality requirements.

Telcordia's concerns regarding Section 4.2 of the RFP are similarly misplaced. That provision deals exclusively with the regular review of the LNPA(s) to ensure that the LNPA remains neutral throughout the term of its contract. Indeed, the requirement applies only to entities that have already been *selected* to be LNPAs, and thus it has absolutely no impact upon Respondents as the *Telcordia Ex Parte* inaccurately suggests. Like the initial neutrality audit, nothing about the ongoing review would require disclosure of protected information. Rather, the ongoing requirement serves to ensure that each LNPA continues to remain neutral throughout the term of the Master Agreement, as required by the FCC's Rules and prior LNP Orders.

The Procurement Documents, as currently written, also fully address the concerns that Telcordia has expressed about the confidentiality of Respondent submissions. First, all RFP submissions by Respondents are subject to the Mutual Non-Disclosure Agreement (available at [www.napmlc.org/](http://www.napmlc.org/)) that every Respondent and the NAPM LLC must execute before the Respondent accesses the RFP. The Mutual Non-Disclosure Agreement prohibits every recipient of confidential information, including the FoNPAC and the SWG, from:

- using or reproducing any confidential information it receives as a result of the RFP for any purposes other than in connection with the LNPA selection process; or
- disclosing such confidential information to anyone other than affiliates, members of the LNPA SWG, the Chair of the NANC, the FCC, or those employees, officers, agents and consultants of the NAPM LLC who need to have access to such information to assist in the LNPA selection process.

The confidentiality provisions in the Procurement Documents do not supersede, limit, or otherwise nullify the mutual commitments made by any party to the Mutual Non-Disclosure Agreement.

Beyond the substantial protections provided by the Mutual Non-Disclosure Agreement, nothing in the Procurement Documents requires that a Respondent provide sensitive information, IP, or trade secrets to the NAPM LLC in their responses. Indeed, Respondents who cannot submit a bid without disclosing a trade secret likely would be unable to provide LNPA services without disclosing those secrets if selected as an LNPA. Nonetheless, to the extent that a Respondent feels compelled to disclose trade secrets as part of the LNPA selection process, the Mutual Non-Disclosure Agreement not only protects confidential information from disclosure but also explicitly ensures that confidential information can be used solely to evaluate potential LNPA vendors. As such, there is no basis whatsoever for Telcordia's concerns that participation in the RFP process will be chilled due to lack of sufficient confidentiality safeguards.

### III. THE FCC SHOULD NOT DEVIATE FROM STANDARD BIDDING PROCEDURES TO IMPOSE NOVEL RESTRICTIONS HERE

The LNPA selection process is a direct reflection of the FCC's commitment to a fair and competitive process in accordance with well-established FCC rules and practices, which the NAPM LLC fully supports.<sup>16</sup> The current Procurement Documents are designed to provide NANC, the SWG, and the FoNPAC with the flexibility to recommend, and the FCC to select, the highest quality LNPA services possible at the best value. However, the introduction of additional regulatory constraints on the competitive bidding process at this late hour would only interfere with, and delay, the selection process without adding any value for consumers, the industry as a whole, or the FCC itself.

The Commission should not, for example, revise the RFP *to require* that a Best and Final Offer be solicited from more than one Respondent, as requested in the *Telcordia Ex Parte*.<sup>17</sup> The RFP reserves the right for the FoNPAC, with oversight from the SWG, "to seek best and final offers from one or more Respondents if additional information is necessary or responses must be altered or explained in order to make a final decision."<sup>18</sup> This right ensures that the FoNPAC, with oversight from the SWG, can request additional information from Respondents who have a legitimate chance of being selected, without mandating that information be requested from everyone, including Respondents who are unqualified or whose submissions are so uncompetitive that they have no legitimate chance of being selected. In short, the RFP as written merely provides the flexibility to avoid the wasted time and effort that would result from seeking clarification of bids that are simply uncompetitive.

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<sup>16</sup> See Numbering Resource Optimization, CC Docket No. 99-200, 15 FCC Rcd. 7574, 7640-41 ¶ 150 (2000).

<sup>17</sup> *Telcordia Ex Parte* at 2-3.

<sup>18</sup> RFP p. 61, Question 13.6.

This flexibility in the service bidding process as currently written is entirely consistent with government acquisition practices under the Federal Acquisition Rules, which only require “each offeror still in the competitive range [to] be given an opportunity to submit a final proposal revision.”<sup>19</sup> There is no reason to modify this rule here, where there is no incentive by any party to abuse this discretion to the detriment of any Respondent. Moreover, granting Telcordia’s request for a change in the RFP could encourage all Respondents to refrain from submitting their best possible bid during the initial proposal round, knowing that they could further revise their proposal if necessary to win the contract during the Best and Final Offer phase where the pool of Respondents may be narrower. This type of wasteful gamesmanship would only interfere with the ability of the NANC, SWG, and the NAPM LLC to recommend, and the FCC to select, the best LNPA services at the best value.

For the same reason, the FCC should deny Telcordia’s request that all bidders be forced to submit bids that reflect Telcordia’s individual preferences regarding service areas.<sup>20</sup> As currently written, the Procurement Documents provide bidders with the maximum amount of flexibility to submit multiple, competing proposals, without unduly restricting the manner in which the Respondents structure their bids. Requiring all Respondents to submit regional bids that match pre-determined geographic areas would skew the competitive bidding process more than permitting Respondents to submit as many, or as few, bids as they deem fit, with the flexibility to structure those bids in whatever manner they believe will be most competitive. There simply is no justification for requiring every Respondent to submit separate bids for every region – as defined by the RFP, rather than by the Respondent itself – or to submit a national bid.

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<sup>19</sup> FAR § 15.307(b). FAR § 15.307(b) replaced FAR § 15.611(a), which required “best and final offers” to be sought only from those “offerors still within the competitive range.”

<sup>20</sup> *Telcordia Ex Parte* at 3.

The FCC has recognized the benefits of providing bidding parties with the flexibility to develop their own bid proposals in other contexts. For example, in the Mobility Fund Phase I auction, scheduled to begin September 27, 2012, the FCC specifically provided bidding parties the flexibility to aggregate small geographic areas (*e.g.*, census blocks) into larger areas to obtain economies of scale based upon the bidding party's own internal cost structures, private assessments of risk, and other factors related to the bidder's specific circumstances.<sup>21</sup> Mobility Fund bidders are not required to submit separate bids for each census tract or to submit single bids for entire states or regions, nor are they required to submit a national bid. There is no reason to prescribe artificial limits on bidder flexibility or to deny other Respondents the ability to submit proposals that take advantage of economies of scale. To the extent that any Respondent chooses to submit a bid proposal on a regional basis, it is surely free to do so. But there is no reason to require other Respondents to follow the same pattern or to require all bidders to modify their proposals so that a single party might compare more favorably to them.

#### **IV. FURTHER CONSIDERATION OF TELCORDIA'S URI FIELD DISPUTE SHOULD NOT DELAY THE LNPA SELECTION PROCESS**

Finally, the *Telcordia Ex Parte* argues that Telcordia's pending dispute regarding the inclusion of Uniform Resource Identifier ("URI") fields in the NPAC database should be resolved prior to the initiation of the LNPA selection process. As the FCC knows, this dispute remains pending following its referral from the NANC after several years of consideration before the NANC and the FCC.<sup>22</sup> Telcordia's position on this issue, as well as the contrary and consensus position of the overwhelming majority of interested parties, is well known and

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<sup>21</sup> See Comment Sought on Competitive Bidding Procedures for Auction 901 and Certain Program Requirements, AU Docket No. 12-25, *Public Notice*, DA 12-121 at ¶¶ 26, 28-50 (Feb. 2, 2012).

<sup>22</sup> See *e.g.*, Wireline Competition Bureau Seeks Comment on Telcordia Petition to Reform or Strike Amendment 70, *Public Notice*, 24 FCC Rcd 10,271 (2009).

available to all. While the NAPM LLC would surely welcome the Commission's resolution of the dispute by denying Telcordia's petition, there is no reason to further delay the implementation of the RFP process pending resolution of the dispute, especially in light of the magnitude of work that must be completed before the expiration of the current contracts and the limited time in which to accomplish it.

## **CONCLUSION**

For the reasons set forth above, the NAPM LLC respectfully requests that the Bureau immediately endorse the Procurement Documents without modification.

Respectfully submitted,

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

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