WILTSHIRE & GRANNIS LLP

October 25, 2012

Ex Parte – corrected

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 October 23, 2012, Rich Jacowleff and Joel Zamlong, of Telcordia Technologies, Inc. ("Telcordia" or "Ericsson")[1] (by telephone), Louise Tucker, of Ericsson, Madeleine Findley, of this firm, and I met with Sean Lev, Diane Griffin Holland, Neil Dellar, Maureen Duignan, and Suzanne Tetreault of the Office of General Counsel, and Bill Dever, Lisa Gelb, Marilyn Jones, Travis Litman, Christopher Sova, and Ann Stevens of the Wireline Competition Bureau. During the meeting, we discussed Telcordia's concerns regarding the proposed Request for Proposal ("RFP") and associated Technical Requirements Document ("TRD") and Vendor Qualification Survey ("VQS") for the next Local Number Portability Administrator(s) ("LNPA").[2] Specifically, we addressed Telcordia's concern that the process ensure neutrality and be transparent, open, and competitive. Contrary to Neustar's claims in its October 18 ex parte, Telcordia has raised both procedural and substantive concerns with respect to the VQS and the RFP, and other commenters have also raised substantive concerns with the RFP.[3]

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1 Ericsson closed its acquisition of Telcordia Technologies, Inc. on January 12, 2012. Telcordia is now a wholly-owned subsidiary of Ericsson, Inc.

2 *See Wireline Competition Bureau Seeks Comment on Procurement Documents for the Local Number Portability (LNP) Administration Contract*, Public Notice, DA 12-1333 (rel. Aug. 13, 2012).

3 Comcast, for example, objected to the RFP's failure to solicit information about peering arrangements. *See* Comments of Comcast Corp., Docket Nos. 95-115, 07-149 & 09-109, 2-5 (filed Sept. 13, 2012).

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Telcordia affirmed its position that neutrality is of vital importance for an LNPA. Neutrality requires a considered evaluation by the Commission, and cannot be a basis for the Future of Number Portability Administration Center Subcommittee ("FoNPAC") failing to consider a bid, where the bidder has obtained a legal opinion that it would meet the neutrality requirements, if selected. Neustar now concedes that it would be inappropriate for FoNPAC to fail to consider any bid on the merits, provided that a bidder obtained an opinion of counsel that it would satisfy neutrality. Neustar also now appears to agree that the Commission must be the final arbiter of compliance with the neutrality rules.[4] Any evaluation must occur prior to the final FCC award, and to the extent that FoNPAC's recommendation is affected by neutrality concerns, it should be required to specify those concerns and to explain the result that would have occurred in the absence of such concerns.

Telcordia noted that, apart from concerns with the neutrality evaluation process, it continues to have concerns with respect to the substance of a subset of the RFP's neutrality requirements that go beyond the FCC's rules. As Telcordia has previously explained in its filings, the RFP incorporates the Commission's neutrality rules. But it also incorporates the *Neustar/Warburg* Code of Conduct that was adopted specifically for Neustar to address its unique circumstances when it was acquired by Warburg Pincus, at a time when Warburg also owned and controlled telecommunications carriers. The Neustar Code of Conduct was not adopted as a rule of general applicability and should not be applied as such.

Although certain safeguards in the Neustar Code of Conduct express universal principles, such as prohibitions on giving preference or special consideration to any telecommunications carrier, requirements that all user data or carrier proprietary data be maintained as confidential, and restrictions on allowing shareholders of the LNPA from having access to user data or proprietary information of a telecommunications carrier except as needed to perform LNPA duties, others reflect specific concerns about Warburg Pincus and its ownership interests when it acquired Neustar that are not universally applicable and may erect unnecessary barriers. Furthermore, as Telcordia set forth in its October 1 ex parte, Neustar does not appear to be applying certain provisions of its Code of Conduct as written:[5] Neustar's description of how it implements one of the safeguards—with respect to employee stock ownership—does not appear to be consistent with the strict, plain reading of the safeguard.[6] While Neustar's modification may be a reasonable accommodation, the fact that it is not reflected in the Code of Conduct suggests that the Code itself is not fully transparent. There is also the possibility that the Neustar Code could be incomplete or inapposite in another setting. For these reasons, Telcordia suggested a parallel review process to permit the Commission to resolve any neutrality concerns in a timely manner.

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[4] Contrary to Neustar's protestations, Telcordia has never proposed that the Commission review neutrality in secret. Telcordia believes that using "permit-but-disclose" procedures for such a review would be appropriate, and could occur in the pending dockets.

[5] *See Ex Parte* Letter of John T. Nakahata, Counsel to Telcordia Technologies, Inc., to Marlene H. Dortch, Secretary, FCC, Docket Nos. 95-116, 07-149 & 09-109, at 5 (filed Oct. 1, 2012).

[6] Comments of Neustar, Inc., WC Docket Nos. 95-166, 07-149 & 09-109, at 11 (filed Sept. 13, 2012).

Safeguards are most effective when designed to fit the particular circumstances of a vendor, and should therefore be proposed by the vendor to be evaluated in the neutrality evaluation. Telcordia agrees that the safeguards each bidder would propose should be made explicit in the bidder's response to the RFP. Telcordia simply believes that each bidder should have the same opportunity that Neustar has had to propose appropriate measures to monitor and to safeguard neutrality. This will help ensure that neutrality safeguards serve their purpose, and are not used as a way unnecessarily to reduce the number of vendors in the final stages of the selection process.

With respect to the competitive bidding portions of the RFP, Telcordia has noted that it has raised four objections: (1) the failure to require the submission of regional as well as national bids; (2) the provision for the solicitation of a best-and-final offer from a single bidder, rather than more than one bidder; (3) the apparent use of other bids (which could be the incumbent's inflated bid) to establish price reasonableness; and (4) the failure to provide clear transparency with respect to the selection, as would be required under FAR 15.503. In the October 23 meeting, we discussed the first three of these, but all need to be addressed.

With respect to whether the RFP should require regional as well as national bids, Neustar contends in its October 9 ex parte that it would be "inappropriate" to require bidders to submit both regional and national bids.[7] Neustar provides no authority for this assertion. Rather, the Commission has standing policy favoring multiple regional LNPAs, and there is nothing inappropriate about a buyer specifying that it wants to receive quotes for the whole country and for portions of the country. As Professor and former FCC Chief Economist Bill Rogerson discussed, the government at times has deliberately multisourced its procurement.[8] Federal telecommunications contracts, for example, are multisourced, even if the vendors would have preferred a winner-take-all bid.[9] The circumstances here make it all the more important for the Commission to require all bidders to provide both regional and national bids. Telcordia is extremely confident that it could build an NPAC system and operate it with only a fraction of the revenues paid to Neustar today. There is no cost-based reason why Neustar—which already possesses an NPAC—would economically need to serve the entire country in order to have a viable business model for serving only a set of regions. No bidder other than Neustar, as the nationwide incumbent, has an incentive to bid on a national-or-nothing basis. For Telcordia or another entrant, a third or half of the country would not preclude bidding for a subset of the

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7 *See Ex Parte* Letter of Aaron M. Panner, Counsel to Neustar, Inc., to Marlene H. Dortch, Secretary, FCC, Docket Nos. 95-116, 07-149 & 09-109, at 2 (filed Oct. 9, 2012).

8 *See* William P. Rogerson, *An Economic Analysis of Competitive Procurement Design Options for NPAC Services*, at 19 (Sept. 13, 2011) ("*Rogerson Report*"), submitted as attachment to Ex Parte Letter of John T. Nakahata, Counsel to Telcordia Technologies, Inc., to Marlene H. Dortch, Secretary, FCC, Docket Nos. 95-116, 07-149 & 09-109 (filed Sept. 15, 2011).

9 *See*, *e.g.*, U.S. General Services Administration, Connections II, June 28, 2012, at http://www.gsa.gov/connectionsii (The federal telecommunications contract program selected multiple vendors to provide telecommunications services to federal agencies; agencies may choose between pre-competed vendors) (last accessed Oct. 25, 2012).

seven regions. This is not mere speculation: Telcordia has already done this once—when it submitted an unsolicited bid to NAPM in 2008 that was based on a regional model.[10]

Neustar's incentive to bid only a national bid stems from the fact that it undoubtedly recognizes that it will be more difficult for the industry to shift 100% of its supply of NPAC services to another vendor than it would be to shift a third, half or even two thirds. Shifting to a new vendor inevitably involves some degree of risk – risk which Neustar can monetize in a higher bid price. Regional bidding mitigates that risk from the standpoint of the Commission, and thus reduces Neustar's premium by increasing its exposure for bidding higher. As the buyer, it is entirely appropriate for the Commission to insist that bids be submitted that maximize its information and flexibility, and to curtail the incumbent's attempt to increase its leverage at the Commission's (and ratepayers') expense. At this point, the Commission need not decide whether there will be a single nationwide contract or multiple regional contracts. The question is whether the Commission will get all of the information it needs to make a decision in the public interest. To do this, the RFP should require all bidders to submit regional as well as national bids, and to describe how they would ensure seamless operations with other NPACs in a regional environment. Telcordia will, in a subsequent ex parte, provide additional details as to how this could work and ensure that all regions are covered.

With respect to the RFP's provision permitting the solicitation of a best-and-final offer from a single bidder, Telcordia reiterated that this would permit the competitive bid process to be converted back to sole source negotiation. In order to maintain competition through all stages of the process—which Neustar now concedes is important[11]—the RFP should specify that BAFOs, if solicited, will be requested from more than one bidder.

With respect to price reasonableness, the RFP would appear to permit a low bidder to be excluded simply because its bid was substantially below other bids which is particularly troubling if there are few bidders. That should not be permitted. As Telcordia stated in its comments to the RFP, the Commission should instead use the language similar to FAR 15.305 or the language from the most recent NANPA solicitation and specify that it will use "price reasonableness" as a way to determine that a Respondent's bid proposals—operational, management, and technical items—support and justify the price provided.[12]

Finally, as stated in Telcordia's comments, the Commission should use language from FAR 15.503 and require the SWG/FoNPAC to provide a detailed explanation of the bid data,

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[10] It should be recalled that NAPM declined to pursue this offer, stating that it preferred to explore a peering architecture that would yield greater choice – and that NAPM then promptly cut a new deal with Neustar that economically foreclosed a regional approach. *See, e.g.*, 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 Management, WC Docket No. 07-149, at 22-23 (filed May 20, 2009).

[11] *Ex Parte* Letter of Aaron M. Panner, Counsel to Neustar, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 07-149 & 09-109, 2-3 (Oct. 18, 2012).

[12] Comments of Telcordia Technologies, Inc., WC Docket Nos. 95-116, 07-149 & 09-109, at 16-17 (filed Sept. 13, 2012).

evaluation procedures, and scoring methods along with LNPA recommendations when submitted to the Commission for review. Section 15.503(b) of the FAR expressly requires contracting officers to notify all bidders within three days of contract award with the information regarding the number of bidders solicited, the number of bids received, the name and address of each award winner, the general terms of the award (quantity, unit price), and a general explanation of why the losing bidder's offer was not accepted.[13] The FCC will need *at least* the same information in order to reach a decision on the LNPA selection recommendations.

These revisions fall squarely within the Commission's purview as the agency overseeing and managing local number portability. The NPAC/SMS contract is a contract to fulfill a Congressional mandate, required by agency rules, and funded by a federal-agency-levied mandatory contribution factor,[14] as Telcordia has extensively demonstrated.[15] The FCC's rules specify the framework for almost every aspect of the contract: what it must cover, how it is administered, who must pay for it and how.[16] The FCC's rules, moreover, reserve oversight and management ultimately to the agency.[17] Neustar does not distinguish the Local Number Portability Administrator contract from the NANPA and PA Administrator contracts, which govern the duties of the NANPA and PA Administrators appointed pursuant to the same statutory authority and are funded in the same manner. Indeed, the Commission has conducted its NANPA and PA procurements under the Federal Acquisition Regulations. Nor does Neustar set forth a principled distinction from the TRS Administrator and USF Administrator, all of which are designated by the FCC, and paid—like the Local Number Portability Administrator—from mandatory assessments levied on telecommunications carriers and interconnected VoIP providers pursuant to FCC rule.

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[13] 48 C.F.R. 15.503.

[14] 47 C.F.R. § 52.32.

[15] *See*, *e.g.*, *Ex Parte* Reply of Telcordia Technologies, Inc. to the *Ex Parte* Response of Neustar, Inc., Docket Nos. 07-149 & 09-109, 5-35 (filed Feb. 16, 2010); Reply Comments of Telcordia Technologies, Inc., Docket Nos. 07-149 & 09-109, 7-51 (filed Sept. 29, 2009); *Ex Parte* Comments of Telcordia Technologies, Inc., WC Docket No. 07-149, 11-13 (filed Jan. 7, 2008); Reply Comments of Telcordia Technologies, Inc., WC Docket No. 07-149, 18-23 (filed Sept. 21, 2007).

[16] *See* 47 C.F.R. §§ 52.23, 52.25, 52.26, 52.32, 52.33, 52.34, 52.35, and 52.36.

[17] 47 C.F.R. § 52.26(b)(3).

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Telcordia shares the desire that the LNPA procurement documents be finalized and issued expeditiously but believes that in order to obtain the best result for consumers, expediency and fairness can be satisfied through the changes that Telcordia has suggested.

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

Sincerely,

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Madeleine V. Findley
Counsel to Telcordia Technologies, Inc.

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