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November 16, 2012

Ex Parte Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: CC Docket No. 95-116; WC Docket No. 07-149; WC Docket No. 09-109

Dear Ms. Dortch:

I write on behalf of Neustar, Inc., in response to the November 13, 2012, submission of Ericsson, Inc. ("*Ericsson Nov. 13 Ex Parte*"). Ericsson proposes a major change to the RFP process to *require* – rather than to *invite* – regional bids, according to a structure that Ericsson favors but that otherwise has no record support. The Commission should find both the substance and the timing of Ericsson's proposal unacceptable.

1. Under the RFP proposed by the FoNPAC and the NANC, bidders are invited to "submit proposals for one, all, or any combination of some but not all of the seven Regions, either individually or in combinations."¹ That structure affords all bidders maximum flexibility to submit the bid or bids that they believe will be most competitive; it also provides the most informative basis for the industry and the Commission to evaluate competing proposals. To the extent a bidder submits a regional proposal that offers genuine advantages over competing national proposals, the industry has the ability to seek additional regional proposals through the best-and-final-offer process.

By contrast, a mandate that bidders submit regional proposals as a condition of participation in the RFP would distort the bidding process and limit competition. Requiring all

¹ *Proposed 2015 LNP RFP* § 14.1.

bidders to submit regional bids that they may not believe are competitive invites strategic behavior by bidders as they seek to mitigate the unknown risks and complexities of operating in a multi-vendor environment.² This will make the entirety of the bids less, rather than more, informative to the industry and the Commission.³ Moreover, Ericsson's proposal would effectively bar participation by bidders seeking to serve a particular region or set of regions. The proposed RFP Documents favor flexibility to maximize participation; the bidding protocol that Ericsson proposes eliminates that flexibility.

Neustar has already described the drawbacks to a multi-NPAC environment, based on the operational realities of NPAC services.⁴ Further, the costs and complexity of developing a regional bid are substantial – requiring, among other things, the bidder to address coordination with other, unknown vendors – as the detailed questions included in the proposed RFP make clear. The record thus establishes that there are strong reasons for bidders to decline to submit regional bids for reasons that have nothing whatsoever to do with “incumbency.”⁵

² Ericsson's insistence that the particular group of regions that a bidder would serve “would not be chosen by the bidder, but would be assigned by the Commission,” *Ericsson Nov. 13 Ex Parte* at 3, ignores the cost and operational distinctions among regions and is therefore unworkable.

³ Ericsson asserts that obtaining regional bids will assist in the evaluation of “the possibility of shifting to a peering model in the future.” *Ericsson Nov. 13 Ex Parte* at 2 n.3. Ericsson does not reveal that the NANC's LNPA Working Group already devoted substantial resources to evaluation of an NPAC peering model and, after lengthy review, failed to reach consensus that it was operationally feasible. See NANC 437 Report – Final, Jan. 11, 2001, available at http://www.npac.com/content/download/4666/64719/January_11-12_2011_final_lnpa_minutes.doc (page 3). Ericsson's suggestion regarding peering may be especially self-serving: Ericsson has filed a patent application that would seek to claim a “network arrangement for number portability” involving peering. See U.S. Patent Application Serial No. 12/695,742.

⁴ Such drawbacks include (1) loss of scale and scope economies in the provision of NPAC service; (2) loss of transactional economies on the carrier-customer side as a result of the need to connect and interact with multiple vendors; (3) reduced innovation; (4) increased costs associated with coordination; (5) increased complexity; and (6) reduced reliability. See Letter from Aaron M. Panner to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109, at 5-6 (Sept. 11, 2012); Letter from Aaron M. Panner to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109, at 2 (Nov. 22, 2011) (submitting Scott E. Masten, *Scale and Transactional Economies in NPAC Services and the Design of Competitive Bidding Procedures*).

⁵ Ericsson asserts that Neustar's potential submission of a national bid would reflect its desire to take advantage of an incumbency, *Ericsson Nov. 13 Ex Parte* at 1, but the claim is unsupported and makes little sense. The current bidding structure maximizes the fairness and transparency of

Those having the greatest experience with and expertise in numbering issues, along with the representatives of the industry that depends on – and pays for – the NPAC, have proposed an RFP structure that they have deemed most conducive to effective competition. For the Commission to override that judgment would require a detailed and objective record; what Ericsson offers is only its own, naked preference. There is no record evidence that would justify the exercise of the Commission’s regulatory authority solely to favor the interests of a single potential bidder.

2. Ericsson’s proposal is particularly suspect coming, as it does, at the eleventh hour. Ericsson could have submitted the details of a proposed regional bidding requirement months or years ago. Instead, it insisted that the Commission should require regional *awards*, a position that it no longer defends. Ericsson’s failure to submit its proposal in a timely manner prevents the Commission from making a reasoned evaluation of its merits, based on objective data. That is especially true because the proposal is highly complicated – apparently requiring multiple levels of regional bids based on arbitrary and ill-defined regional groupings as a prerequisite to the submission of any national proposal – and omits important details. Its unprecedented proposal that bidders be required to submit not just one, but two different regional bids simply to be permitted to compete on a nationwide basis underscores the arbitrariness of its approach.

Ericsson does not claim that any RFP process has ever been conducted along the lines it proposes; much less does it provide any evidence to support any conclusion that such a bidding structure offers any prospect of a better outcome. Apparently, Ericsson believes that the Commission can impose Ericsson’s proposal on the industry based on Ericsson’s say-so alone, but a regulator cannot override the objective recommendation of its own designated experts without strong record support.

Continued delay in the approval of the proposed RFP Documents harms the industry and benefits no one except, evidently, Ericsson. There is no other explanation for its continued effort to prevent approval of RFP Documents that were the product of scrupulous preparation by the industry and the NANC, and that have earned the unanimous support of the industry, state regulators, and consumers. Ericsson insists it is ready to compete. It is not the only one. It is time to let that competition begin.

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the bidding process – which should be favored by any bidder that, like Neustar, has confidence that it can compete and win on the merits in this highly competitive process.

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If you have any questions concerning this matter, please contact me at (202) 326-7921.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron M. Panner", with a long horizontal flourish extending to the right.

Aaron M. Panner
Counsel for Neustar, Inc.

cc: Neil Dellar
William Dever
Maureen Duignan
Lisa Gelb
Diane Griffin Holland
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