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

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)	
In the Matter of:)	
)	
<i>Petition of Neustar, Inc. for a</i>)	
<i>Declaratory Ruling Concerning</i>)	
<i>the Local Number Portability</i>)	
<i>Administration Request for Proposal</i>)	
)	
<i>Local Number Portability</i>)	CC No. 95-116
)	
<i>Petition of Telcordia Technologies</i>)	WC No. 09-109
)	

**PETITION OF NEUSTAR FOR DECLARATORY RULING CONCERNING
THE LOCAL NUMBER PORTABILITY ADMINISTRATION
SELECTION PROCESS**

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EXECUTIVE SUMMARY

Neustar, Inc. (“Neustar”) requests that the Commission immediately rectify the Local Number Portability Administration (“LNPA”) Selection Process to: (1) amend the RFP to include input from all industry constituencies; (2) clarify rules governing the LNPA to ensure the selection process proceeds in a transparent and impartial manner; and (3) direct the NAPM to pursue additional proposals consistent with the revised RFP. The Commission should do these things because the existing process for selecting the next LNPA is flawed in its design and implementation.

The Selection Criteria Are Flawed. The selection criteria chosen by the Commission’s delegates fail to encompass the scope of services that the LNPA’s users have come to expect and to rely upon under the existing contract; fail to account for critical transition requirements, whose cost and risk will fall disproportionately upon smaller service providers; fail to account for the technological sea change inherent in the Internet Protocol transition; and fail to incorporate technical requirements necessary to ensure accessibility, reliable interconnection, consumer protection, and public safety and security in the nation’s telecommunications system—the “network compact” that has been a priority of this Commission.

The LNPA Selection Process Fails To Reflect the Needs of Key Constituencies. The selection process has failed to reflect the needs and requirements of those who rely most heavily upon the LNPA: Consumers and Businesses, Small and Competitive Telecommunications Service Providers, Law-Enforcement and Public-Safety Agencies, and State Regulators.

The LNPA Selection Process Is Procedurally Defective. The selection process is procedurally flawed in a manner that raises serious doubt as to whether the process will identify the best technical and management solution and the most competitive price. It has been marked by such defects as the reopening of the deadline for proposals to benefit an offeror that

apparently failed to submit its proposal on time and the failure to allow further competitive proposals from all qualified offerors. And it has failed either to adhere to the transparency required of Commission permit-but-disclose proceedings, or to invoke the necessary contracting authority required if this were a federal procurement.

The Appropriate Remedy. The Commission should reform the selection process to ensure that those who use these critical services can retain the functionality that they have come to expect and rely upon and that is needed to enable the next wave of innovation in telecommunications. The Commission should issue a declaratory ruling directing the NANC to amend and/or restate the RFP based on the input of all interested constituents of the telecommunication industry; announcing clear rules governing the selection process (and affirming that it will take necessary actions to ensure the process is conducted openly and impartially); and directing the NANC and NAPM to solicit and accept additional proposals that conform to the revised RFP standards. As a critical component of the U.S. telecommunications infrastructure, the NPAC and NAPM are simply too important to allow an inadequate LNPA selection to stifle the competition that the LNP was designed to foster, impede innovation to support next-generation technologies, and harm millions of consumers.

I. INTRODUCTION

Neustar, pursuant to Section 1.2 of the Federal Communications Commission's ("FCC" or "Commission") rules¹ and Section 5(e) of the Administrative Procedure Act, respectfully submits this Petition for Declaratory Ruling ("Petition") to request that the FCC instruct the North American Portability Management, LLC ("NAPM")/Future of the NPAC Subcommittee

¹ 47 C.F.R. § 1.2 ("The Commission may, in accordance with Section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.").

(“FoNPAC”) to amend the Request for Proposal (“RFP”) for a Local Number Portability Administrator (“LNPA”)² in the United States, to open a round of comments to solicit input from key constituencies on how the RFP needs to be amended, to require additional competitive bidding for the RFP, and to direct NAPM/FoNPAC that the RFP solicitation and bid award process must be clear and in conformance with applicable law and well-understood rules.³

Neustar brings this petition to remedy significant deficiencies in the process of selecting the LNPA for the next five-to-seven-year term. Recent filings by COMPTTEL and Telcordia Technologies Inc.⁴ have shed a light on problems with the selection process, the RFP, and the exclusion of some stakeholders who are deeply invested in the outcome of this process.⁵ Furthermore, the Wireline Competition Bureau’s recent letter to the Chair of the North American Numbering Council (“NANC”) highlights “concerns over the fairness of this process so far.”⁶ Neustar shares the Commission’s concerns about “irregularities or improprieties” in these

² 47 U.S.C. § 251(b)(2); 47 C.F.R. §§ 52.20 *et seq.*

³ Neustar has already requested that the Commission direct FoNPAC “to grant all bidders (not just Neustar) the opportunity to submit additional proposals, either by extending the date for submission of a response to the first best-and-final-offer (‘BAFO’) or by issuing a second request.” Letter from Aaron Panner, Counsel to Neustar, to Julie Veach, Chief of the FCC’s Wireline Competition Bureau, Jonathan Sallet, FCC General Counsel, CC Dkt. No. 95-116, WC Dkt. No. 07-149, WC Dkt. No. 09-109 (filed Jan. 15, 2014). We now believe that merely to consider additional offers would not address all of the myriad problems with the RFP and selection process that Neustar has identified in this Petition, and would therefore be an insufficient remedy.

⁴ Telcordia Technologies Inc. (“Telcordia”), d/b/a “iconectiv,” is part of Ericsson and, unless the context dictates otherwise, will be referred to as “Ericsson” throughout.

⁵ See Letter from COMPTTEL to North American Portability Management LLC (Nov. 1, 2013), *available at* <http://apps.fcc.gov/ecfs/document/view?id=7521071567> (“COMPTTEL Letter”); Letter from John T. Nakahata and Madeleine Findley, counsel to Telcordia, to Julie Veach, Chief of the FCC’s Wireline Competition Bureau and Jonathan Sallet, FCC Acting General Counsel (Feb. 5, 2014); *available at* <http://apps.fcc.gov/ecfs/document/view?id=7521071316>.

⁶ See Letter from Julie Veach, Chief of the FCC’s Wireline Competition Bureau, to the Hon. Betty Ann Kane, Chair of the North American Numbering Council (Feb. 11, 2014).

proceedings,⁷ and provides details in this Petition regarding procedural problems and implementation flaws, many of which stem from the absence of a clear and transparent administrative process.

Given the critical significance of the issues raised herein, Neustar respectfully requests that the Commission take action on the broader set of concerns framed in this Petition, particularly the fact that the RFP criteria no longer reflect the current and evolving needs of the stakeholders as well as emerging technological challenges. The longer the Commission waits to resolve these questions, the more serious potential delays and implementation challenges will become. Swift action by the FCC can correct these problems while there is still time to preserve the level of service that service providers and consumers have come to expect from the LNPA.

A. The LNPA’s Critical Role in the Telecommunications Industry.

The LNPA “has become a critical component of the telecommunications industry’s infrastructure.”⁸ Over 4400 entities rely on the NPAC every day to route voice calls and text messages to their intended destinations and to perform other related services. The essential purpose of choosing a LNPA is “to provide the neutral, technologically proficient, and cost-effective administrative services that are necessary for achieving the important pro-consumer and pro-competitive purposes of local number portability (‘LNP’).”⁹ Throughout the history of the NPAC contract, and in this selection process, the choice of the LNPA has been based on important criteria including technical and functional proficiency standards and competitive

⁷ *Id.*

⁸ *Petition of Telcordia Technologies*, Order and Request for Comment, WC Dkt. No. 09-109, CC Dkt. 95-116, DA 11-109 ¶ 2 (rel. Mar. 8, 2011) (“FCC March 8, 2011 Order & Request”), Attachment A at 1.

⁹ *Id.* at 3.

neutrality.¹⁰ The LNPA fosters competition in the service provider market, plays a vital role in the accurate routing of all voice and text communication, and is an irreplaceable public safety resource.

Since 1997, Neustar has served as the LNPA with uniformly excellent reviews and unmatched technical ability. In North America, porting a telephone number takes mere seconds; a consumer can walk into a service provider's retail outlet and walk out minutes later with the same number associated with a new device and service provider.¹¹ In other countries that are not serviced by Neustar, the process can take significantly longer. For example, in India customers may be out of service for hours during the transition to their new carrier and the porting process can take weeks to complete.¹²

Although on the most basic level, local number portability is a system that enables consumers to keep their telephone numbers when they switch from one telecommunications service provider to another, the function and importance of the NPAC have increased well beyond number porting. The implications for consumers, businesses, and the telecommunications industry have been enormous since Congress first mandated in 1996 that this service be made available.

¹⁰ *Id.* at 5. “[C]ompetitive neutrality” means that the local number portability database administrators must be unaligned with any industry segment and that local number portability database administrators must treat competing users of their services impartially with respect to costs, terms, and conditions. *Id.*

¹¹ See Jennifer Pigg & Brian Partridge, *Telephone Numbers are Portable; Is the NPAC?*, Yankee Group, 3 (Apr. 2012), available at http://www.neustar.biz/corporate/docs/yankee_npac_whitepaper.pdf (“Yankee Group White Paper”).

¹² See W. Bruce Allen, *India's Experience with Mobile Number Portability*, 9 (May 3, 2012), available at http://www.neustar.biz/corporate/docs/india_experience_with_mobile_number_portability.pdf.

The advent of local number portability as part of the Telecommunications Act of 1996 (the “1996 Act”) made it easy for consumers and businesses to select freely the communications service provider of their choice while retaining a familiar telephone number.¹³ The 1996 Act envisioned local number portability as a critical part of an entire package of reforms—which also included mandatory interconnection obligations for incumbent carriers and new entrants and universal service requirements—needed to ensure competition in the telecommunications marketplace.

Local number portability has brought with it many benefits. For consumers, local number portability has enabled the retention of a telephone number when changing providers, and expanded the commercial options available when choosing service. For service providers, local number portability has encouraged technological innovation and expanded commercial opportunities to attract and retain consumers. Both consumers and industry benefit from the stimulation of competition made possible by local number portability. To be competitive, a telecommunications market must enable consumers and businesses to port telephone numbers from one service provider to another with minimal disruption and at little to no cost. Relatively few consumers or businesses would be willing to move to a competitor’s service if they were not able to transfer their telephone number. Importantly, local number portability also allows businesses and consumers to switch between technologies, so that a business that started with a number associated with a landline service, for example, can retain its number if it finds that Voice over IP (“VoIP”) or wireless service is a better fit for its business model. The boom in telecommunications competition in the late-1990s, along with subsequent expansion of

¹³ See 47 U.S.C. § 251(b)(2). In addition, local number portability was part of the competitive checklist for a Regional Bell Operating Company to enter into long-distance service. See 47 U.S.C. § 271(c)(2)(B).

technological models available for telecommunications services, was not a coincidence, but was inextricably linked to the advent of local number portability.¹⁴

The implementation of local number portability also significantly increased the complexity of managing the distribution and maintenance of telephone numbers. While prior to the 1996 reforms telephone numbers were controlled and managed by regional incumbent operators, they could now be moved between service providers. In addition, the number of service providers increased as new telecommunications services and technologies were introduced or expanded. Thus, in drafting the 1996 Act, Congress stressed the importance of an “impartial” number administrator.¹⁵

B. The RFP Does Not Reflect Current and Evolving Needs and Technical Requirements.

At a May 2010 NANC meeting, the NAPM formally announced a selection process for the successor LNPA contract, scheduled to take effect no earlier than July 2015.¹⁶ From the present perspective, it is clear that the process for selecting the successor LNPA suffered from substantive and procedural flaws from the outset that call into question the process as a whole. Viewed in isolation, any one flaw might conceivably be excusable. Viewed *in toto*, it is now clear that these flaws have frustrated the essential purpose of the selection process—to settle upon the “most advantageous”¹⁷ LNPA to serve the industry and consumers.

¹⁴ See generally FCC, *Trends in Telephone Service* (May 6, 2004), available at http://transition.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/trend504.pdf (discussing the growth in competitive telecommunications services).

¹⁵ 47 U.S.C. § 251(e)(1).

¹⁶ The draft RFP was released in August 2012. See *Wireline Competition Bureau Seeks Comment on Procurement Documents for the Local Number Portability (LNP) Administration Contract*, Public Notice, WC Dkt. No. 09-109, 07-149, CC Dkt. No. 95-116, DA 12-133 (rel. Aug. 13, 2012) (“August 13, 2012 Public Notice”).

¹⁷ 2015 LNPA RFP § 14.1.1.

The selection process is flawed because, despite opportunities for broader participation, the selection criteria, as set forth in the RFP and related documents, no longer reflect current and evolving needs and requirements of participants in the telecommunications industry. Selection criteria and technical requirements were initially established by a non-representative subset of large service providers (the members of the NAPM) without direct participation by the NANC's subgroups with the role of stewarding technical and operational requirements. In hindsight, this disadvantaged key constituents that do not participate in the NAPM such as small competitive local exchange carriers ("CLECs"), small wireless carriers, small and rural incumbent local exchange carriers ("ILECs"), state regulators, and consumers. Specifically, this process resulted in selection criteria that: (1) do not encompass the scope of services that consumers and the industry have come to expect and to rely upon under the existing LNPA contract; (2) fail to account for critical transition requirements, the cost and risk of which will fall disproportionately upon smaller carriers; (3) fail to account for—or set forth technical requirements for—the technological sea change that will be caused by the Internet Protocol transition in the coming years; and (4) lack the technical requirements necessary to ensure accessibility, reliable interconnection, consumer protection, and public safety and security in the telecommunications system—the “network compact” that has been a priority of this Commission.¹⁸

The selection process has also been procedurally flawed in a manner that calls into question whether the process will truly identify the best technical and management solution and the most competitive price. Rather than seeking the “most advantageous” offer able to stand on its merits, the process has appeared arbitrary and capricious, including changing the rules to help

¹⁸ See Prepared Remarks of Tom Wheeler, Computer History Museum, Mountain View, California (Jan. 9, 2014), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0117/DOC-325054A1.pdf (“January 9, 2014 Wheeler Remarks”).

an offeror that apparently failed to submit its proposal on time, and most recently failing to consider additional rounds of proposals from all qualified offerors. Throughout, the process has been cloaked in secrecy and has lacked clear rules, neither adhering to the openness and transparency required of Commission permit-but-disclose proceedings, nor invoking the necessary contracting authority required if this were a federal procurement.

What has become clear is that the process used to date has not been conducive to the selection of an LNPA “most advantageous” to the industry and consumers. Reformation of the process is required. The Commission should issue a declaratory ruling to revise the RFP and LNPA selection process to ensure that the substantive selection requirements incorporate the present and future needs of all participants in the telecommunications industry. It should further direct that the selection process be reopened—and restarted if necessary—to ensure that competing proposals both meet those needs and are the “most advantageous” possible. The NPAC is simply too important to allow an inadequate LNPA selection to impede the next five-to-seven years of service and technical innovation.

II. THE SELECTION CRITERIA DO NOT SERVE THE PUBLIC INTEREST BECAUSE THEY DO NOT ADDRESS CRITICAL LNPA FUNCTIONS.

The selection criteria established for choosing the next LNPA are fundamentally flawed.¹⁹ Developed without adequately considering the needs of all interested parties, the

¹⁹ Neustar was largely supportive of the RFP documents and the proposed process at the time the RFP documents were proposed in Fall 2012. *See, e.g.*, Letter from Aaron M. Panner, Counsel to Neustar, to Marlene H. Dortch, Secretary, FCC, CC Dkt. No. 95-116, WC Dkt. No. 07-149, WC Dkt. No. 09-109 (Oct. 18, 2012); Letter from Aaron M. Panner, Counsel to Neustar, to Marlene H. Dortch, Secretary, FCC, CC Dkt. No. 95-116, WC Dkt. No. 07-149, WC Dkt. No. 09-109 (Oct. 23, 2012); Letter from Aaron M. Panner, Counsel to Neustar, to Marlene H. Dortch, Secretary, FCC, CC Dkt. No. 95-116, WC Dkt. No. 07-149, WC Dkt. No. 09-109 (Nov. 6, 2012). Neustar’s support was based in part on its understanding that the industry would be free to conduct the evaluation process in a manner that would ensure that any gaps in the documents would be filled in sensibly. From the present vantage point, it is clear that the RFP documents did not adequately address either then-current needs or anticipated technological development.

selection criteria fail to require the next LNPA to provide the essential functions and services of the current NPAC; to account for the significant costs and disruption that will be caused by any LNPA transition; to account for the transformative technology shift to Internet Protocol, currently underway, which will fundamentally alter the technical and service requirements imposed on the LNPA over the term of the next NPAC contract; and to enforce the “network compact.” In light of the critical role played by the LNPA, and its importance to consumers, service providers, and the telecommunications industry, the Commission cannot abide the critical flaws in the RFP itself.

A. The RFP Criteria Are Inadequate Because They Were Developed Without Proper Consideration of the Needs of Key Constituencies.

Given the importance of the NPAC to consumers, regulators, and service providers, the requirements and expectations of the next-generation LNPA contract must reflect and be interpreted in light of the needs of all of these interested parties. Any changes in technology or service disruptions directly and immediately affect the stability of service-provider operations. Thus, under longstanding procedures, any modifications to system behavior and performance of the NPAC have reflected a “bottom up” approach. The needs of the users and beneficiaries of the NPAC have first been expressed through the NANC and its working groups; only then has the NAPM embodied them in contract language.

Since the original NPAC contract was executed in 1997, a standard process has been followed to develop and implement changes to service and functionality provided by the LNPA.

Furthermore, the administrative flaws discussed in Part III below have apparently created constraints on the process, amplifying the significance of weaknesses that were not evident at the outset. In short, the inconsistent and inequitable administration of that process has placed the RFP criteria (and the parties’ responses to them) in a very different light.

A priority has been placed on ensuring that those impacted by the services have direct input in deciding and defining which services will be contractually required. Under the established process, any new or revised Statements of Work (“SOWs”) or other changes to the NPAC specifications have been the result of an open, consensus-based process within the NANC and its subcommittees. All technical changes to the NPAC have started in the LNPA Working Group, a subcommittee of the NANC. This group, which is open to all interested parties, considers and approves technical changes that are then sent for commercial consideration by the NAPM. This sequence was followed for every critical NPAC expansion since its inception: including but not limited to the introduction of Wireless Number Portability, National Pooling, One-Day-Porting, and the expansion of NPAC to support IP-based routing attributes. NANC’s charter mandate to act as a representative body has ensured that any changes to the NPAC specifications are supported by the consensus of constituents in the telecommunications industry.

The current NPAC RFP was developed outside of the full NANC, or its LNPA Working Group, and without direct participation from all affected constituencies. Rather, the NPAC RFP was drafted and its requirements defined by the NAPM and its subcommittee, the FoNPAC. The NAPM is not a representative body. It is comprised of ten large service providers and excludes important groups such as state regulators, smaller service providers, and consumers. It disclaims any fiduciary duties to any of these groups.²⁰ Accordingly, the NANC and the Commission bear a special responsibility to ensure that the evaluation of selection criteria serve the interests of those constituencies not represented on the NAPM.

²⁰ Section 4.9 of the NAPM’s limited liability company agreement provides that each “Member [of NAPM] may act solely in its own interest to the fullest extent permitted by applicable law.” See North American Portability Management LLC, Amended and Restated Limited Liability Company Agreement (Nov. 10, 2003).

It appears that the NAPM and FoNPAC developed the requirements for the successor LNPA RFP without giving adequate weight to the risks inherent in transition or to the costs that smaller providers would incur—an issue that Neustar has pointed out before. Despite opportunities for public comment, the RFP requirements were not revised to reflect these issues. And contrary to usual administrative practice, no Order was issued explaining how the solicited public comments had been evaluated or incorporated into the RFP documents. As a result, it appears that the views and needs of consumers, state regulators, and small service providers have not been adequately incorporated into the criteria for selection of the next LNPA.²¹

Because the process has not adequately considered and addressed the needs of key constituents, we believe it has failed to give effect to the Bureau’s mandate to ensure “wide industry participation in the LNPA selection process.”²² As discussed below, the result is an RFP process that fails to meet the needs of the users and beneficiaries of the NPAC.

B. The RFP Should Be Amended or Clarified To Eliminate the Mismatch Between Its Specifications and the Technical and Service Requirements Being Provided Today and To Ensure Responses Address Future Technical and Service Needs.

The RFP does not fully specify, or even require, that the next LNPA perform all of the services currently being provided by the NPAC. Many of the services Neustar currently provides are outside the functional and technical specifications referenced in the RFP, yet are essential to providing the full service upon which consumers and service providers have come to rely. Thus, if an offeror is selected that commits to provide nothing more than the services and capabilities currently described in the RFP, the level of service will instantly degrade upon implementation.

²¹ See COMPTTEL Letter.

²² FCC March 8, 2011 Order & Request, at 2-3.

For example, the RFP does not require the following industry services currently being provided by the LNPA:

- Disaster Recovery and Emergency Preparedness: The current LNPA has developed a specialized set of skills and procedures to deal proactively and reactively with emergency network migrations required in response to natural and man-made disasters. In one extraordinary case, the NPAC and the LNPA played a critical role in restoring service after Hurricane Katrina, when hundreds of thousands of phone numbers—including those of first responders—went out of service because much of the switching infrastructure was literally underwater. The LNPA coordinated between the carriers, state regulators, the Commission, and other participants in the telecommunications system to update the system and re-route communications traffic to secure and functioning infrastructure. Similar accounts could be provided regarding 9/11 and other disasters over the past 17 years. Most of this work takes place behind the scenes as individual service providers use the NPAC to protect their networks and make them resilient to damage or attack. The LNPA continues to work with carriers and others to prepare proactively for future emergencies and help ensure any service disruptions are minimized. The current RFP does not specify emergency preparedness and disaster recovery as a function of the LNPA, and it does not solicit information that could inform the Commission as to whether the next LNPA has such expertise or would be willing to perform these services without demanding additional compensation.
- Ecosystem Management: The LNP ecosystem is vast, complex, and interdependent, such that the accuracy and effectiveness of the entire system depends heavily upon the performance not only of the NPAC itself, but also upon the hundreds of platforms connected to it. To ensure continued performance, the current LNPA has developed custom tools to monitor all elements of the LNP ecosystem and to identify or correct for any connection failures or slowdowns in the receipt of information. Without this function, a degradation of one service provider's connection would cause the entire ecosystem to slow down and experience partial failures. In instances in which a problem with an individual service provider's connecting system is identified, the LNPA works with that provider to resolve the problem or isolate the issue in a way that protects the rest of the ecosystem. The current RFP does not require the LNPA to perform this critical service, without which the reliability of the LNP system will be severely compromised.
- Mass Port Processing: The current LNPA has developed customized software tools and procedures to deliver comprehensive end-to-end services for NPAC users performing large-scale network migrations—for example, those triggered by technology modifications or upgrades, divestitures following a merger or acquisition, or ongoing network grooming. This service, offered free of charge to service providers by the current LNPA, is not a “nice-to-have” feature. A substantial majority of the requests for mass porting at the NPAC require error correction, project management and scheduling, and post-migration support. All of these services are necessary to ensure that the service providers are fully supported. If the LNPA were to adhere strictly to the requirements

specified in the RFP, this service, relied upon each and every day by the industry, would not be provided under the new contract, leaving service providers either to absorb these functions on their own or contract separately with the LNPA to receive them at additional cost.

Because the current RFP does not explicitly specify or require these functions—or numerous others that the LNPA provides without imposing additional costs upon the industry—it risks the selection of a vendor whose capabilities and expertise in these areas cannot be properly verified, and one that could charge the industry substantial additional fees for performing these services. The risk is particularly pronounced because the loss of these services would disproportionately disadvantage small competitive carriers that lack the resources of the large carriers to perform some of these functions independently.

C. The RFP Should Be Amended or Clarified To Account for Critical Transition Requirements.

Transition to a new LNPA provider—which will affect hundreds of millions of subscribers and thousands of NPAC users (including not only telecommunication service providers, but also law enforcement and public safety agencies)—carries with it significant complexities and risks. In fact, none of the 70+ countries that use LNPA vendors has ever attempted such a transition—and transitioning these platforms would be trivial in comparison to doing so in the U.S., given the unique breadth of services and consumer experience here. Yet notwithstanding a high-level requirement that the transition be effectuated, nowhere do the current RFP documents detail the specific requirements, schedule, approach, and parameters of the transition. Instead, they leave it to bidders to make their own assessments of what kind of transition would be appropriate and how to accomplish such a transition. And the assessment of the adequacy of these transition plans is left to the NAPM, which includes only those large service providers with the greatest capacity to absorb those costs and risks, and does not include the open NANC subgroups with the greatest technical and operational expertise.

The costs and risks of transition are expected to be significant, and all NPAC users will incur expenses to support it. A paper prepared by Dr. Hal Singer of Economists Inc. has projected a cost of \$719 million in the first year alone due to system transition, ongoing transaction processing, and testing.²³ Its analysis concludes that 7.1 million consumers will be impacted, with approximately 5 million incremental calls to customer service centers. By virtue of their heavy reliance on LNP, the smaller service providers, which have limited financial and technical resources, will bear the greatest burden of this transition. And the Standish Group concluded, following a detailed analysis, and having considered past IT projects of similar complexity (such as HealthCare.gov), that the probability of a successful and timely NPAC transition is just 4 percent.²⁴

Moreover, these transition risks have increased significantly as a result of repeated delays in the selection process. The FoNPAC initially allowed 30 months for the transition (albeit with no detailed plan or requirements). But as of this writing, no selection has yet been made, and the end of the current NPAC contract is less than 17 months away.

At a minimum, the RFP documents should expressly define, and offerors should be required (as relevant) to address, the following critical requirements:

- detailed specifications of all services provided by the current LNPA provider, along with a requirement that a new LNPA guarantee a seamless transition as to each;
- a full inventory of all connected and interested parties that rely on the NPAC and LNPA services, and the manner in which they are mapped to the services provided;
- a listing of Defined Transition Services that would be required by the current LNPA vendor and associated costs;

²³ See Hal J. Singer, *Estimating the Costs Associated with a Change in Local Number Portability Administration* (2014), available at <http://www.ei.com/downloadables/SingerServicesTransition.pdf>.

²⁴ See Standish Grp. Int'l, *Big Bang Boom*, at 2 (2014), available at blog.standishgroup.com/BigBangBoom.pdf (“Standish Group, *Big Bang Boom*”).

- an agreed approach to, and schedule for, transition and cut-over that accommodates all LNP constituents;
- documentation of Operational Procedures and Dependencies that have been tested and verified;
- a definition of Project Management that includes a resourcing plan, dispute resolution, and governance of a complex process involving more than 4400 entities that have diverse technologies and business interests;
- the precise risks of transition (as identified in a credible risk assessment, with appropriate mitigations defined) and a plan for how the LNPA vendor would mitigate them;
- fall-back scenarios and procedures, given the inevitability of issues necessitating roll-backs of changes;
- a detailed timeline outlining required resources, governance, risk mitigation and success criteria, now that the originally assumed 30-month transition period has been significantly reduced by the delays in the selection process;
- a projection of financial and resource impact upon all NPAC customers covering all aspects of the transition and post-implementation period; and
- a projection of the financial and operational impacts of service providers connected to multiple LNP vendors simultaneously.

Given the role that the NPAC plays in the telecommunications system, it is critical that the RFP specify in detail what the next LNPA must do to ensure the transition does not result in service disruption to customers and service providers. Moreover, the RFP fails to account for (or to include in its evaluation criteria) the considerable costs of transition. This omission is especially serious when one considers that there is no precedent for a transition of this complexity and magnitude. It is precisely for these reasons that Neustar sought clarification through the FoNPAC's established process concerning how transition plans would be evaluated. No guidance was provided in response. The RFP should be amended or clarified to provide such requirements.

D. The RFP Should Be Amended or Clarified To Address IP Transition Issues and New Technology Developments.

As the recent *Transition Order* acknowledges, the Internet Protocol (IP) Transition raises “challenges and opportunities for the assignment of telephone numbers within the North America numbering plan and for the features, capabilities, and security of numbering-related resources.”²⁵ Meanwhile, ensuring that these numbering systems continue to operate reliably and efficiently during and after the transition is “essential to preserving core values of competition and consumer protection.”²⁶ For instance, number portability “encourages competition by allowing consumers to respond to providers’ price and service changes without losing their phone numbers.”²⁷

The RFP, however, fails adequately to take into account these challenges and opportunities, in part because the potential requirements have only recently become apparent. In its 75 pages, the RFP devotes only a few lines to the IP Transition.²⁸ And, in this space, the RFP articulates only two nebulous requirements: that the “NPAC/SMS architecture must be *flexible* in order to support the transition of the Public Switched Telephone Network (PSTN) to an all-Internet Protocol (IP) network,”²⁹ and that the LNPA must be able to “work expeditiously

²⁵ *Technology Transitions; AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition; Connect America Fund; Structure Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Numbering Policies for Modern Communications*, Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Initiative, FCC 14-5, ¶ 151 (rel. Jan. 31, 2014).

²⁶ *Id.*

²⁷ *Id.*

²⁸ See 2015 LNPA RFP at Question 7.2.5.

²⁹ *Id.* (emphasis added).

with the industry to implement any required change.”³⁰ This vague language requires little, if any, concrete action by the LNPA, and it is inadequate to assess the comparative merits of the proposals. When combined with another provision in the RFP, it may even provide a disincentive for an offeror to support specific modifications needed for the IP Transition. In particular, RFP Section 13.4 provides that the cost for any Statement of Work (SOW) requested by the NAPM shall be included as part of the annual fixed price and shall not result in a separate additional charge.³¹

This deficiency in the RFP documents has practical implications for the selection process, and makes it difficult to assess a true “apples-to-apples” comparison between proposals, as offerors are likely to have very different views as to how the TDM-to-IP transition should be pursued. For example, in its proposal, Neustar put forward a robust plan to enable the industry to utilize the unique capabilities of the NPAC as an IP routing database, a solution that will facilitate the transition from TDM to IP. In fact, it has been working with the industry on such an approach for some time with increasing interest and acceptance.³²

In contrast, on January 31, 2014, Ericsson sent a letter to the Commission criticizing Neustar for suggesting that the NPAC be used as an IP routing database and noting that it would be putting forward IP routing solutions that use other databases, including its own proprietary

³⁰ *Id.*

³¹ *Id.* § 13.4.

³² *See* Comments of AT&T, GN Dkt. No. 13-5, at 25 (filed July 8, 2013) (“The development of this ENUM-database is a critical predicate to the ability of the industry to scale IP interconnection An expanding number of providers, including ILECs, CLECs, cable companies, and wireless providers, are working on proposals for using the NPAC . . . to provide this function, and have begun discussions to initiate a trial later this year.”).

BIRRDS and LERG systems.³³ On February 7, 2014, Ericsson submitted three proposals for consideration by the Alliance for Telecommunications Industry Solutions’ Packet Technologies and Systems Committee (“ATIS PTSC”) regarding next generation numbering to support IP interconnection. Only one of these solutions refers in any way to the NPAC as part of an IP interconnection solution, and even then it refers to the NPAC merely as an “exception database” used for porting and pooling. Under Ericsson’s proposed solutions, the NPAC is relegated to an ancillary role. The requisite functionality would be subject to fee payments or change order requests for the use of Ericsson’s proprietary platforms, rather than making use of the capabilities of the NPAC for this purpose.

Absent an open and transparent mechanism to explore the future requirements of the LNPA in light of IP transition, the industry will be deprived of a full assessment of the most advantageous proposal. Rather than the RFP’s vaguely requesting that NPAC/SMS be “flexible” and that the LNPA be willing to “work with” the industry, the RFP should set forth specific criteria to help ensure that the selected NPAC/SMS can keep up with the nation’s evolving networks, based in part upon the recent record created by the FCC and relevant technical bodies. For example, the RFP could require that the NPAC/SMS be able to serve as a universally accessible Tier 1 ENUM registry—a function AT&T indicates is essential to the transition and that the NPAC/SMS is well-suited to provide.³⁴ Offerors would then have an opportunity to articulate how they would support these requirements, thus allowing an informed decision as to LNPA selection.

³³ See Letter of Louise L.M. Tucker, Vice President-Regulatory & Senior Counsel for iconectiv, to Marlene H. Dortch, Secretary of the FCC, WC Dkt. No. 13-97 (Jan. 31, 2014), *available at* <http://apps.fcc.gov/ecfs/document/view?id=7521070628>.

³⁴ See Comments of AT&T, GN Dkt. No. 13-5, at 25 (filed July 8, 2013); *see also* Comments of Neustar, Inc., WC Dkt. Nos. 13-97, 04-36, 07-243, 10-90, CC Dkt. Nos. 95-116, 01-92, 99-200, at 11 (Filed July 19, 2013).

It is critical that the Commission's numbering systems are able to accommodate and facilitate the changes that are imminent and, in some places, already happening. To ensure that the LNPA and the NPAC/SMS are prepared for and can adapt to this changing landscape, the RFP should be amended or clarified to take full account of the IP Transition and other technological developments.

E. The RFP Should Be Amended or Clarified To Enforce the “Network Compact” by Ensuring the Seamless Functioning of the LNPA in Sustaining Retail Competition and Public Safety Access.

Emphasizing the economic and social importance of information networks, FCC Chairman Tom Wheeler describes the interlocking rights of consumers and responsibilities of network providers as the “[n]etwork [c]ompact” that ensures accessibility, reliable interconnection, consumer protection, and public safety and security.³⁵ The NPAC sits at the center of our critical communications networks and provides for a timely, secure, and reliable interface between networks and consumers. The RFP must reflect this network compact to ensure the ongoing and seamless continuing function of number portability in sustaining interoperability, interconnection, consumer mobility, retail competition, and public safety access. In its current form, the RFP fails to provide vendors with sufficient direction to ensure implementation of certain required elements consistent with those goals. Furthermore, proposals fully compliant with the RFP's minimal requirements may fail to uphold the core values inherent in the network compact and result in degradation of service levels to the detriment of some providers and the public.

Sustaining Retail Competition. Local number portability is a critical component of a healthy regime of competition and interconnection support for a network of networks, which in

³⁵ See January 9, 2014 Wheeler Remarks.

turn is essential to ensure that consumers are well-served by their providers. Being able to maintain the continuity of a single telephone number provides consumers and businesses with a critical link to their families, employers, customers, and communities. As former Commissioner Harold Furchtgott-Roth has noted, “[o]ur telephone numbers form part of our identity,” and are “programmed into [our] handsets, registered in [our] computers, and even locked in [our] memories.”³⁶

Consumers’ confidence in their ability to seamlessly transfer telephone numbers between a landline, mobile phone, or VoIP service also directly fuels innovation and competition in the telecommunications marketplace.³⁷ Portability facilitates competition by reducing switching costs and lock-in effects. As the House Commerce Committee Report on the 1996 Act noted, “the ability to change service providers is only meaningful if a customer can retain his or her local telephone number.”³⁸ Absent such confidence, the transaction costs of potentially losing an important phone number would be too high and consumers would hesitate to switch providers.³⁹ As a result, competitive carriers would find it nearly impossible to win new consumers, and

³⁶ Former FCC Commissioner Harold Furchtgott-Roth, *The Importance of Neutrality in Number Portability Administration* at 4, attached to Comments of Neustar, Inc., WC Dkt. No. 09-109, WC Dkt. No. 07-149, CC Dkt. No. 95-116 (filed Sept. 13, 2012) (“Comments of Furchtgott-Roth”).

³⁷ The Commission has recognized numerous studies concluding that businesses and individuals are reluctant to switch carriers if doing so risks losing their existing phone number. *See In re Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, ¶ 29 (rel. July 17, 1996).

³⁸ House of Representatives Committee on Commerce Report on H.R. 1555 at 72 (July 24, 1995) (cited in Comments of Furchtgott-Roth at 11 n.16).

³⁹ Indeed, Congress understood reliability as such an important feature of LNP that it built the concept into the definition: the 1996 Act defines number portability as “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.” 47 U.S.C. § 251(b)(2). A new report by an IT analysis firm, the Standish Group, suggests that the transition to a new LNPA poses significant risks to the system’s reliability. *See Standish Group, Big Bang Boom.*

innovation at the margins of the marketplace would begin to atrophy.⁴⁰ If a lack of confidence in number portability re-established significant barriers to switching, carriers might conclude that pricing and service innovations that improve overall consumer welfare are not worth investing in.⁴¹ Significantly, number portability today is intermodal, and allows consumers to transition between wireless, wireline and VoIP technologies.⁴² The failure of local number portability would leave consumers trapped in a technological silo, unwilling or unable to transition to the latest communications technologies.

Reliable portability demands near perfect accuracy, speed, and neutrality in order to satisfy consumer demand for rapid transfer between providers.⁴³ The Commission advises consumers that the porting process should take as little as one day,⁴⁴ and U.S. consumers have grown accustomed to switching wireless service providers within minutes. The importance of neutral administration of the NPAC to fair treatment of competing carriers has been widely acknowledged,⁴⁵ and neutrality remains critical to the basic rights of consumers to freely access

⁴⁰ Small carriers have expressed concern that LNP failures could have a “devastating impact” on their businesses. *See* COMPTTEL Letter.

⁴¹ *See* Comments of Sprint Nextel Corporation, WT Dkt. 11-65, 36-37 (filed May 31, 2011) (describing various pro-consumer innovations driven by competition among carriers for customers).

⁴² *See* Comments of Furchtgott-Roth at 5.

⁴³ Under Neustar’s stewardship, the NPAC has achieved extraordinary levels of reliability and effectiveness, achieving 99.999 percent reliability. *See* Yankee Group White Paper.

⁴⁴ *See* FCC, *Portability: Keeping Your Telephone Number When You Change Service Providers*, <http://www.fcc.gov/guides/portability-keeping-your-phone-number-when-changing-service-providers> (last visited Feb. 9, 2014).

⁴⁵ *See, e.g.*, Comments of Public Knowledge, WCB Dkt. No. 09-109; WC Dkt. No. 07-149, CC Dkt. 95-116, at 2 (filed Sept. 12, 2012) (“But if the administrator had the incentive to make the process burdensome in order to prevent a consumer from switching from a company it favored, it would quickly undermine the number portability system. Moreover, service providers will be loathe to share the confidential information that is essential to making the LNP system work if

competitive information networks, a key element of the network compact. The LNPA must coordinate the efforts of two carriers—one losing a customer and one gaining a customer—whose immediate interests are not aligned.

Even the *perception* of bias on the LNPA’s part endangers public confidence in the portability system. Just as consumers may decline to port their numbers if the system proves unreliable, non-neutral administration could discourage service providers from collaborative innovation or discourage consumers from availing themselves of those options. For example, if consumers believed that the LNPA would provide slower or less reliable service in porting numbers to carrier X, they might be inclined to avoid switching to that carrier, in order to avoid the disruption that a delay in porting could cause.

Many of the systems required to provide this seamless functionality are simply ignored by the RFP. Elements necessary to operate the NPAC—including everything from testing tools to systems that monitor the NPAC’s performance—are not fully defined or explicitly called for in the RFP. Additionally, revisions to the RFP have significantly reduced the guarantee of neutrality by removing many of the clear lines that would govern the stewardship of service providers’ confidential information and that would forbid any special preference or consideration for one party or industry segment over another. Without requiring offerors to account for these critical aspects of the portability process, the Commission cannot be sure that offerors have accurately reflected the price of providing the level of service customers reasonably expect—or that they intend to provide it at all.⁴⁶

they perceive the administrator to be associated with a competitor or aligned with a different industry segment.”) (“Public Knowledge Comments”).

⁴⁶ See Comments of Furchtgott-Roth at 16–18 (highlighting the remarkably low number of consumer complaints about number portability); see also Public Knowledge Comments at 2 (“In addition, an extraordinary level of performance by the LNP administrator is a key to ensuring a

Public Safety. From the earliest days of local number porting, public safety organizations recognized the importance of the LNPA in protecting the public safety and that nothing less than the highest level of service will do.⁴⁷ For example, the LNPA provides two systems critical to law enforcement and public safety answering point (“PSAP”) providers: the more basic service, the Interactive Voice Response (IVR) system, allows law enforcement and PSAP organizations to call an access number and follow a simple automated process to learn the service provider associated with a particular telephone number.⁴⁸ IVR also provides the service provider’s contact information that law enforcement organizations will need to issue subpoenas or otherwise contact service providers for additional information. A more advanced offering, the Local Number Portability Enhanced Analytical Platform (“LEAP”), provides a more flexible online interface allowing for greater search volumes and a secure mechanism that facilitates accurate and timely subpoena delivery. Neustar has performed these services with extremely high levels of accuracy, despite processing more than a million number changes in real time every day. These services are reflected in the RFP requirements, but the RFP does not provide adequately detailed specifications for an alternate vendor to implement. Without a more comprehensive description of these services and the expected level of performance, the Commission cannot be assured that a new vendor will continue to provide the high level of

positive customer experience. Flawless performance and management by the LNP administrator is crucial—it’s what consumers have come to expect and deserve. Delays in porting could cost consumers time and money and limit consumer choice and competition because when consumers get frustrated with slow porting, they often abandon efforts to switch providers.”).

⁴⁷ See Barry Bishop, *LNP, Pooling and IVR: What are the impacts to Public Safety Organizations and Law Enforcement?*, Lockheed Martin (Aug. 13, 1998), available at www.numberpool.org//tools/archives/law-archived/law_911_registration/apco.ppt.

⁴⁸ *The IVR System*, Number Portability Administration Center, <https://www.npac.com/the-npac/access/law-enforcement-agencies-psaps/ivr-system> (last visited Feb. 9, 2014).

service law enforcement agencies have come to expect or that significant transition expenses for law enforcement will be avoided.

In addition to its law enforcement and emergency calling functions, the LNPA also plays an important role in disaster preparedness and recovery. Because the NPAC can “manage virtually all the telephone area codes and numbers in real time” and “enable the dynamic routing of calls among thousands of competing communications service providers,” the LNPA is uniquely positioned to help restore communications when a disaster strikes.⁴⁹ In this role, Neustar has engaged in proactive outreach in advance of potential service interruptions due to inclement weather, to assist service providers in planning alternate routing options, and in real-time collaboration with regulators and service providers to deliver business/service continuity in the event of widespread facilities disruption. For example, as noted above, after Hurricane Katrina, service providers used local number portability services to port numbers from flooded or damaged switches to functioning equipment nearby. While the NPAC currently provides these services over and above Neustar’s contractual requirements at no extra charge, the RFP neither defines nor requires these services. Given their proven effectiveness at restoring essential communications networks, disaster-related porting services must be clearly defined and required in order to properly protect the public interest.

III. THE LNPA SELECTION PROCESS HAS NOT FOLLOWED A CLEARLY IDENTIFIED LEGAL REGIME AND HAS BEEN FLAWED IN ITS IMPLEMENTATION.

Given the critical importance of the LNPA selection, one would have expected the selection process to have been carried out fairly, neutrally, thoroughly, and in accordance with clearly articulated and well established procurement procedures. Rather than a fair, neutral and

⁴⁹ See Yankee Group White Paper.

reasoned process, however, the entire selection process has been flawed. And the evaluation criteria have failed to give due regard to the true costs of performance, including transition costs that will greatly increase the costs passed through to consumers.

At the same time, the process was implemented in a manner that precluded additional rounds of proposals from all qualified offerors. Because the process appears to have been cut off prematurely, the public and the industry will be deprived of the best and most cost-effective proposals from all qualified offerors. This approach cannot result in the selection of the most advantageous proposal. The process should be reformed and reopened to allow it to fulfill its core mission.

The flawed and arbitrarily applied selection process conducted to date has suffered from at least the following known defects:

- repeated, unexplained changes to the selection process—including an unexplained reopening of the April 2013 proposal submission window, changes to the released RFP documents, and a refusal to invite additional offers despite RFP provisions permitting them, without appropriate public disclosure or opportunity for comment;
- failure to conduct the LNPA selection process under either the permit-but-disclose process ordered by the Commission itself or as a government contracting process; and
- assuming (contrary to the express dictate of the Commission’s March 8, 2011 Order and Request for Comment) that the NPAC contract process is a procurement process, the failure to identify knowable, clear and specific contracting rules (such as the Federal Acquisition Regulations (“FAR”)) to govern the process.

These critical deficiencies will undermine any recommendation to the Commission and they necessitate prompt re-examination of the RFP and RFP process.

A. The LNPA Selection Process Has Been Administered in Contradictory Ways, to the Prejudice of Neustar and to the Advantage of One or More Other Offeror(s), and in a Manner Likely To Undermine the Public Interest.

The selection process has failed to achieve the Commission’s stated purpose of “identify[ing] a clear and concrete process for LNPA selection so that interested parties will understand the steps involved.”⁵⁰

1. The Deadline for Proposals Was Improperly Reopened To Benefit One or More Other Offeror(s).

Perhaps the clearest example of prejudicial process irregularities is the decision to extend the deadline for submission of responses to the RFP for the purpose of allowing one or more offeror(s) to submit an untimely response. The pertinent facts are these:

- In October 2011, the NAPM issued an RFI.⁵¹
- In August 2012, the NAPM released draft RFP documents which were publicized generally (eight months in advance of the eventual due date).⁵²
- On February 5, 2013, the RFP documents were finalized and released, 60 days prior to the April 5, 2013 deadline.⁵³
- On April 5, 2013, Neustar timely submitted its bid in reliance on the posted deadline.⁵⁴

⁵⁰ FCC March 8, 2011 Order & Request ¶ 6.

⁵¹ See *Local Number Portability Database Platforms and Services: Request for Information Available*, Public Notice, WC Dkt. Nos. 09-109, 07-149, 95-116 (rel. Oct. 14, 2012).

⁵² See *Wireline Competition Bureau Seeks Comment on Procurement Documents for the Local Number Portability (LNP) Administration Contract*, Public Notice, WC Dkt. Nos. 09-109, 07-149, CC Dkt. No. 95-116, DA 12-133 (rel. Aug. 13, 2012).

⁵³ See 2015 LNPA VQS; 2015 LNPA RFP.

⁵⁴ See Letter of Aaron Panner, Counsel for Neustar, to Sean A. Lev, Julie A. Veach, Timothy Decker, and Mel Clay, WC Dkt. Nos. 09-109, 07-149, at 3 (Apr. 24, 2013) (“April 24, 2013 Letter of Aaron Panner”).

- On April 5, 2013, an employee of Ericsson posted on social media: “I’m exhausted and still have to write the Executive Summary for this 85 page document. Coffee is failing. Been here 66 straight hours now. . . .”
- On April 17, 2013—12 days *after* the deadline—NAPM notified competitors via e-mail that: “Pursuant to the directions of the **Wireline Competition Bureau** of the Federal Communications Commission, the date and time set for receipt of initial proposals through the IASTA[®] SmartSource SRM[®] Tool, **ARE HEREBY EXTENDED** from April 5, 2013, until **11:59 p.m. EDT on Monday, April 22, 2013.**” The reason for granting this extension was not publicly disclosed.
- The NAPM’s website later stated that the deadline had been extended “with the consent of the FCC.”⁵⁵
- On April 24, 2013, Neustar filed a letter with the Commission’s General Counsel, the Chief of the Bureau, and the Co-Chairs of the NAPM objecting to the deadline extension on the basis that it blatantly prejudiced vendors that submitted their proposals on time, and requesting that the Commission and NAPM provide an explanation of the circumstances giving rise to the extension and the Commission’s role in it.⁵⁶ Neither the Commission nor the NAPM ever responded.

This sequence of events raises serious issues of competence on Ericsson’s part (assuming, as it appears, that Ericsson was the late offeror). The sequence also creates the appearance of favoritism toward a particular competitor and it suggests Commission involvement in the process without public disclosure.

⁵⁵ See North American Portability Management LLC, *NPAC RFI/RFP*, https://www.napmlc.org/pages/npacrfp/npac_rfp.aspx (last visited Feb. 9, 2014).

⁵⁶ See April 24, 2013 Letter of Aaron Panner.

2. The NAPM Failed To Pursue Additional Offers.

In August 2013, the FoNPAC requested that best and final offers (“BAFOs”) be submitted by September 18, 2013. Once again, Neustar met this deadline. Neustar also reasonably anticipated the FoNPAC would seek additional proposals in the interest of fostering competition.⁵⁷ When no such request was made by FoNPAC, Neustar wrote on October 21, 2013, requesting that all vendors be permitted to submit additional proposals.⁵⁸ In its letter, Neustar made clear that it was prepared to make a second, more favorable offer, and it provided a copy of the proposal it was prepared to make. Neustar wrote the FoNPAC again on November 4, 2013, pointing out that seeking additional proposals would be in the public interest and consistent with the previous actions of the FoNPAC.⁵⁹

Neustar received no response from the NAPM to its request that the FoNPAC invite further submissions until January 24, 2014, when the NAPM informed Neustar that it was returning and would not consider Neustar’s unsolicited proposal. The NAPM did not address Neustar’s request that additional proposals be sought from all qualified offerors. The facts set forth in the chronology above are sufficient to suggest the possibility that the Commission may

⁵⁷ Consistent with the usual course of private and public procurements of a similar magnitude, the RFP for the NPAC contract expressly contemplated multiple rounds of proposals. (Section 14.1.1 of the RFP states explicitly that “competition will be used to determine price reasonableness,” and section 13.6 of the RFP gives the FoNPAC authority to engage in such price competition through a multiple best-and-final-offer process. *See* 2015 LNPA RFP §§ 14.1.1; 13.6). Although the draft RFP specifically reserved to the FoNPAC the right to conduct only a single BAFO process, that language was removed from the final RFP. In its place, the RFP implicitly contemplates more than one round of competitive offers. As a result, Neustar reasonably understood it would be permitted to submit additional proposals—a process that also benefits the FoNPAC and consumers by ensuring that the NPAC contract is awarded to the most competitive offeror. Possible misunderstanding regarding these provisions could have been avoided had the Bureau issued an order explaining the changes made to the RFP documents.

⁵⁸ *See* Letter from Aaron M. Panner to Marlene H. Dortch, CC Docket No. 95-116, WC Docket No. 07-149, WC Docket No. 09-109 (Jan. 29, 2014).

⁵⁹ *See id.*

have given guidance that led to the absence of a second round of proposals and, if that were true, such communications would be contrary to normal agency procedures. It would also be inconsistent with Commission rules and the Administrative Procedure Act (“APA”) by acting without providing notice to interested parties—as we discuss further below. Unless the Commission were to rectify such a serious procedural error, the eventual outcome of the selection process would be subject to legal challenge.

B. The LNPA Selection Process—to the Extent It Is a Permit-but-Disclose Rulemaking—Necessitates a More Transparent Administrative Process.

The administrative contracting process followed to date has been highly irregular. Any industry recommendation resulting from this process is likely to be undermined by these infirmities. The process has not complied with the Commission’s March 2011 Order requiring the LNPA selection process to be “clear and concrete . . . so that interested parties will understand the steps involved”⁶⁰ and that the process be “run[] efficiently,” so as to be “impartial to all vendors and all segments of the industry.”⁶¹ Redress is needed to conform the existing process to the requirements of the APA, the 1996 Act, Commission precedent, and sound procurement practices.

The Commission has classified the LNPA selection process as a “permit-but-disclose proceeding in accordance with [its] *ex parte* rules.”⁶² The Bureau has reaffirmed that the LNPA selection process is permit-but-disclose, emphasizing that *ex parte* presentations should be

⁶⁰ FCC March 8, 2011 Order & Request ¶ 6.

⁶¹ *Id.* at ¶ 8; *see also In re Matter of Maritime Commc’ns/Land Mobile LLC*, 26 FCC Rcd 6520, 6538 (2011) (emphasizing efforts made by Commission to “ensure that participants knew and understood the relevant auction service rules and disclosure requirements”).

⁶² *See* FCC March 8, 2011 Order & Request ¶ 17 (citing 47 C.F.R. §1.1200, *et seq.*).

disclosed pursuant to the permit-but-disclose rules.⁶³ The Commission’s classification of the LNPA selection process as a permit-but-disclose proceeding is consistent with the Commission’s long-standing treatment of proceedings related to the NANC and numbering.⁶⁴ Importantly, neither the Commission nor the Bureau has published any statements to indicate that the current LNPA selection process would be treated differently than any other permit-but-disclose proceeding.

Pursuant to the Commission’s permit-but-disclose process, *ex parte* communications to and from the Commission are permissible provided that they are disclosed in accordance with section 1.1206(b) of C.F.R. Title 47. The regulation governing permit-but-disclose proceedings provides, in mandatory terms, for public disclosure of presentations “to Commission decision-making personnel” in the LNPA selection process.⁶⁵ Therefore, any party that has given a “presentation” to Commission decision-making personnel would be obligated to make the communication public.⁶⁶ Key to this inquiry is whether the communication in question is a “presentation” under the Commission’s *ex parte* rules.⁶⁷

⁶³ *Wireline Competition Bureau Seeks Comment on Procurement Documents for the Local Number Portability (LNP) Administration Contract*, Public Notice, WC Dkt. No. 09-109 (rel. Aug. 13, 2012).

⁶⁴ *See, e.g., The North American Numbering Council (NANC) Issues Recommendations on the North American Numbering Plan Administrator, Billing and Collection Agent, and Related Rules*, Public Notice, CC Dkt. No. 92-237 (May 19, 1997).

⁶⁵ 47 C.F.R. § 1.1206(a).

⁶⁶ The Commission’s regulations define a “presentation” as “[a] communication directed to the merits or outcome of a proceeding, including any attachments to a written communication or documents shown in connection with an oral presentation directed to the merits or the outcome of a proceeding.” *Id.* § 1.1202(a).

⁶⁷ Specifically excluded from the definition of “presentation” are “communications which are inadvertently or casually made, inquiries concerning compliance with procedural requirements if the procedural matter is not an area of controversy in the proceeding, statements made by decisionmakers that are limited to providing publicly available information about pending

The Commission should determine whether adequate public disclosure has been lacking here. Any discussions relating to the April 17, 2013 deadline extension—apparently granted “at the direction[] of the Wireline Competition Bureau of the [Commission]”—were not disclosed by any party. In addition, any discussions relating to the possibility of inviting a further round of proposals have not been disclosed by any party. The disclosure of communications that substantially impact decisions affecting those involved in the process should be placed in the record to enable a more effective and transparent process.

C. The LNPA Selection Process—to the Extent It Is a Government Procurement—Has Failed To Notify the Offerors of the Applicable Contracting-Process Rules and To Follow Such Rules.

Although the Bureau is overseeing the LNPA selection process, and Ericsson has sometimes described this matter as a procurement, the Commission has not delegated general authority to the Bureau to conduct “procurements.”⁶⁸ Rather, the Commission’s Managing Director has been delegated the “authority to act as Head of Procurement Activity and Contracting Officer for the Commission.”⁶⁹ So far as we are aware, the Managing Director is not overseeing this process (and Neustar has received no notice of such involvement).

Nor has the Commission specifically delegated to the Bureau the authority to conduct the LNPA selection. The Bureau has recognized as much, agreeing “that decisions regarding the LNPA contract, including the expenditure of money, should be made by the Commission.”⁷⁰ By contrast, prior number-related “procurements” were conducted by the Office of Managing

proceedings, and inquiries relating solely to the status of a proceeding, including inquiries as to the approximate time that action in a proceeding may be taken.” *Id.*

⁶⁸ See 47 C.F.R. § 0.291 (nowhere delegating to the Bureau the authority to conduct procurements); see also *id.* § 0.91 (nowhere including procurements within the Bureau’s functions).

⁶⁹ *Id.* § 0.231(e).

⁷⁰ *May 2011 Order* ¶ 19.

Director, and not the Bureau. For example, both the North American Numbering Plan Contract and the National Pooling Administration Contract were approved and signed by the Commission's Chief Procurement Officer, the Managing Director.

The notion that the LNPA selection process is a procurement contradicts the March 2011 Order classifying this matter as a permit-but-disclose rulemaking. Moreover, if the LNPA selection process is indeed a procurement, the full range of applicable rules have never been disclosed to potential offerors, including Neustar. Clear disclosure of applicable procurement rules is necessary to assure fairness to all offering parties and a most advantageous result for industry and consumers.

For example, the LNPA RFP unequivocally provided that initial proposals “*must* be received on or before [April 5, 2013].”⁷¹ Nonetheless, as detailed above, the NAPM, apparently acting at the direction of the Bureau, extended the deadline for submission of initial proposals, and announced that extension 12 days after the window for submission had closed. This occurred despite the fact that principles of sound procurement preclude the consideration of proposals submitted after the deadline. As the Court of Federal Claims and Government Accountability Office have recognized, a rule barring the consideration of late offers “alleviates confusion, ensures equal treatment of all offerors, and prevents one offeror from obtaining a competitive advantage that may accrue where an offeror is permitted to submit a proposal later than the deadline set for all competitors.”⁷²

Thus, for example, the FAR provides that “[o]fferors are responsible for submitting proposals . . . so as to reach the Government office designated in the solicitation by the time

⁷¹ 2015 LNPA RFP § 1.2.

⁷² *Argencord Mach. & Equip., Inc. v. United States*, 68 Fed. Cl. 167, 173 (2005) (quoting *In re PMTech, Inc.*, B-291082, Oct. 11, 2002, 2002 CPD ¶ 172, at 2).

specified in the solicitation,” and that “[a]ny proposal . . . received at the Government office designated in the solicitation after the exact time specified for receipt of offers *is ‘late’ and will not be considered,*” absent limited circumstances not implicated here.⁷³ Courts have routinely enforced these requirements.⁷⁴

Additionally, under case law addressing certain federal procurement practices, the April 17, 2013 reopening/extension of the deadline itself would be positively prohibited.⁷⁵ Regardless of the nature of the proceeding, the circumstances apparently present here—that the extension was provided to assist another offeror who was unable to get its proposal in on time, that the FoNPAC attributed to the WCB a direct role in causing the extension to be granted, and that the Commission and the NAPM have never responded to requests that the Commission’s role be explained—demonstrate that the selection process has been flawed too severely to continue. Any continuing effort to select the LNPA—as a matter of fundamental procedural fairness—ought to proceed subject to clearly articulated rules governing a proper selection process.

The NAPM rejected a request by Neustar that *all* offerors be afforded an opportunity to submit a further revised best and final offer. The refusal to grant Neustar’s request, which inevitably would have led to enhanced proposals and provided greater value for all stakeholders in the numbering portability system, was manifestly unreasonable.

⁷³ FAR 52.215-1(c)(3) (emphasis added); *see also* FAR 15.208(a)–(b) (imposing nearly identical requirements).

⁷⁴ *See, e.g., Argencord Mach. & Equip., Inc.*, 68 Fed. Cl. at 173; *Conscoop-Conzorzia Fra Coop. Di. Prod. E Lavoro v. United States*, 62 Fed. Cl. 219, 239 (2004), *aff’d per curiam*, 159 F. App’x 184 (Fed. Cir. 2005).

⁷⁵ *See, e.g., Geo-Seis Helicopters, Inc. v. United States*, 77 Fed. Cl. 633, 635, 639–48 (2007) (rejecting contracting officer’s determination because there is no discretion to violate the “late is late” rule embodied in FAR § 52.215-1(c)(3)(ii)(A)). There is contrary authority within GAO decisions, but the existence of irreconcilable decisions only underscores the problem of failing to provide clear notice of the governing rules.

Neustar’s request was fully compliant with the RFP, and granting it would have advanced the procurement’s goal of obtaining proposals that are “most advantageous” to the industry and other affected individuals or entities, considering price and the other evaluation criteria stated in the RFP survey.⁷⁶ The RFP made clear that “competition will be used to determine price reasonableness,”⁷⁷ and it stands to reason that enhanced competition through an additional round of submissions would lead to additional reductions in price.⁷⁸

The FoNPAC’s refusal to accept additional offers evidences a disconnect between the LNPA selection process and sound procurement principles and is inconsistent with the position taken by the NAPM in the past. As it informed Telcordia in 2005:

[T]he NAPM LLC stands ready, as it always does, subject to binding contractual and regulatory limitations [to continue] to explore meaningful unsolicited presentations that can be shown to deliver improved functionality, reliability and efficiency at materially reduced cost to the industry and the public and which adequately addresses issues of transition or interoperability.⁷⁹

The facts set forth in Part III.A above—that the current, established provider with an indisputably excellent performance history was prepared to make a more attractive proposal and

⁷⁶ 2015 LNPA RFP § 14.1.1.

⁷⁷ *Id.*

⁷⁸ *See Galen Med. Assocs., Inc. v. United States*, 74 Fed. Cl. 377, 384 (2006) (approving agency decision to conduct discussions to bring nonconforming offers into the competition because of the agency’s “obligation to obtain the best value for the government”); *SAI Indus. Corp. v. United States*, 60 Fed. Cl. 731, 747 (2004) (“The public’s interest is clearly served when suppliers engage in fair and robust competition for government contracts. Healthy competition ensures that the costs to the taxpayer will be minimized.”); *see also* FAR 15.306(d)(2) (the purpose of discussions – the last step of which is to solicit revised proposals, FAR 15.307(b)—is to “maximize the Government’s ability to obtain best value, based on the requirement and the evaluation factors set forth in the solicitation.”).

⁷⁹ *See* Letter from Suzanne L. Howard, NAPM Co-Chair to Michael S. Slomin, Senior Counsel to Telcordia Technologies (Dec. 2, 2005).

was not allowed to do so—contravene a fundamental objective of federal procurement: Selection of the offer “most advantageous” to the public and the industry.⁸⁰

* * * *

The inconsistencies, ambiguities and failures to disclose outlined above cannot be reconciled with elementary principles of fair notice. Offering parties are entitled to know what the governing rules are, who is administering them, and what kinds of communications may be made and must be disclosed. Taken in their totality, these defects have had a disabling effect on Neustar’s ability to communicate effectively with interested parties in the LNPA selection process.

IV. THE COMMISSION SHOULD REMEDY THESE FLAWS.

As described above, there is a serious question as to whether the flawed LNPA selection process will result in an NPAC that meets the needs of the participants in the telecommunications system—and, indeed, as to whether it will identify the best technical solution at the most cost-effective price. A real danger exists that the next five-to-seven-year contract term—a period of dramatic technical advancements—will be served by an LNPA that has been selected by, and asked to adhere to, outdated and inadequate technical and performance standards. Neither the public interest nor the industry benefits from such a predicament. There is, however, still an opportunity to remedy this situation. The 1996 Act vests the Commission with jurisdiction over all aspects of the North American Numbering Plan, which includes the

⁸⁰ See e.g., RFP § 14.1.1; *SAI Indus. Corp.*, 60 Fed. Cl. at 747; 48 C.F.R. § 13.104 (“The contracting officer must promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is the most advantageous to the Government.”)

NPAC.⁸¹ The Commission should exercise its authority to remedy the selection process.

Specifically, the Commission should:

1. Direct the NANC and the NAPM and its subcommittee, the FoNPAC, to amend and/or restate the RFP based on the input, and with the direct participation, of all interested constituents of the telecommunications system, as reflected by the membership of the NANC, so as to formulate a revised set of performance and technical requirements that accurately and comprehensively represent the functions that must be performed by the LNPA;
2. Along with the NANC, the NAPM and its subcommittee, the FoNPAC, announce clear rules governing the procedures for LNPA selection, and take such actions as to ensure that the selection process is conducted in an open and impartial manner;
3. Direct the NANC and the NAPM and its subcommittee, the FoNPAC, to solicit and accept additional proposals that conform to those revised RFP standards and under clear rules; and
4. Order such other and further remedy as the Commission in its sound discretion deems just and proper.

No doubt there will be concerns that these measures will delay the process of selecting the successor LNPA. But a selection based on outdated and incomplete criteria will result in post-award change orders, cost overruns, and technical shortcomings, all of which are contrary to the public interest. The better view is that a Commission directive to remedy the process will lead to a better outcome.

⁸¹ See 47 U.S.C. § 251(e); FCC March 8, 2011 Order & Request.

V. CONCLUSION

For the reasons set forth above, the Commission should rectify the LNPA selection process.

Respectfully submitted,

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