

February 24, 2014

**VIA ELECTRONIC DELIVERY**

Chairman Tom Wheeler  
Commissioner Mignon Clyburn  
Commissioner Jessica Rosenworcel  
Commissioner Ajit Pai  
Commissioner Michael O’Rielly  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room TWA325  
Washington, DC 20554

**Re:**     *Petition of Neustar, Inc. for a Declaratory Ruling Concerning the Local Number Portability Administration Request for Proposal*  
*Local Number Portability, CG Docket No. 95-116*  
*Petition of Telcordia Technologies, WC Docket No. 09-109*

Dear Chairman Wheeler and Commissioners Clyburn, Pai, Rosenworcel, and O’Rielly:

Neustar, Inc. (Neustar) recently filed a Petition alerting the Federal Communications Commission (Commission or FCC) to flaws in the RFP and selection process for the Local Number Portability Administrator (LNPA).<sup>1</sup> We write today to urge you to direct the Wireline Competition Bureau (WCB) to immediately issue a Public Notice seeking comment on issues raised in Neustar’s Petition and other recent filings<sup>2</sup> to ensure that the selection process serves the public interest.

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<sup>1</sup> *Petition of Neustar for Declaratory Ruling Concerning the Local Number Portability Administration Selection Process*, CC Dkt. No. 95-116, WC Dkt. No. 09-109 (filed Feb. 12, 2014) (Neustar Petition).

<sup>2</sup> *See, e.g.*, Letter from Scott Kell, Executive Vice President, Operations and Engineering of Peerless Network, Inc., to Marlene Dortch, FCC Secretary, CC Dkt. No. 95-116, WC Dkt. No. 09-109 (filed Feb. 21, 2014) (Peerless Network Feb. 21, 2014 Ex Parte Letter); Letter from John Liskey, Executive Director of the Michigan Internet & Telecommunications Alliance, to Julie Veach, Chief of the FCC’s Wireline Competition Bureau, CC Dkt. No. 95-116, WC Dkt. No. 09-109 (filed Feb. 17, 2014); Letter from Angie Kronenberg, Chief Advocate and General Counsel to COMPTTEL, to Marlene Dortch, FCC Secretary, CC Dkt. No. 95-116, WC Dkt. Nos. 07-149, 09-109 (filed Feb. 7, 2014) (COMPTTEL Feb. 7, 2014 Ex Parte Letter); Letter from John Nakahata, counsel to Telcordia Tech. Inc., to Julie Veach, Chief of the FCC’s Wireline Competition Bureau, CC Dkt. No. 95-116, WC Dkt. Nos. 07-149, 09-109 (filed Feb. 6, 2014) (Telcordia Feb. 6, 2014 Ex Parte Letter).

The Number Portability Administration Center (NPAC) is a vital component of the U.S. telecommunications infrastructure, and supports the important interests of a varied set of constituents. Millions of consumers and thousands of service providers rely on it every day. Consumers depend upon the NPAC to enable choice and competition, and to ensure reliable delivery of their calls and texts. Service providers depend upon the NPAC to facilitate competition and customer acquisition, ensure equal access to phone numbers, and support network evolution and business requirements. As COMPTTEL recently emphasized, “LNP is our lifeblood; it’s how we get customers.”<sup>3</sup> Meanwhile, public safety and law enforcement depend on the NPAC to ensure reliable communications services in times of emergency and to support lawful investigations.

To achieve a legitimate recommendation for the follow-on NPAC provider, the North American Numbering Council (NANC), under the supervision of the FCC, must consider the needs of *all stakeholders*, including both large and small service providers, consumers, and those responsible for public safety and national security. It is difficult to see how the FCC and the NANC can fulfill their obligations when:

- Key substantive requirements, including those needed to address critical public safety and national security issues and to maintain services currently provided, have been left out of or glossed over in the RFP;
- The RFP does not account for industry requirements to support important public interest and evolving technology goals such as the IP transition;
- Procedural ambiguities and irregularities in the selection process threaten to prejudice the parties and the public, and to deprive stakeholders of the best possible offers from all offerors;
- The free and transparent flow of relevant information among offerors and selectors has been chilled by the lack of clear rules;
- The disposition of key vendor requirements, including neutrality rules, have been cloaked in secrecy; and
- The RFP fails to define the approach, schedule, costs, or parameters of any vendor transition, including the impact on competition in the telecommunications market.

These concerns are addressed in detail in Neustar’s Petition and summarized in the Appendix to this letter. Importantly, the selection process must enable an apples-to-apples comparison of what services are being offered. But the RFP, in its current form, fails to do this. Instead, it contains generalized, minimal criteria that allow for proposals of widely varying service

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<sup>3</sup> COMPTTEL Feb. 7, 2014 Ex Parte Letter, Attach. at 3.

offerings, price, and quality. Once the target is clear, Neustar is confident that it will offer not only the highest quality, but also the best value.

The consequences of dismissing these concerns could be severe – with the largest burden falling on consumers, small carriers, and public safety. As in any technology transition of the scale contemplated here, an industry-wide transition will almost certainly result in delays, cost-overruns, and missed requirements. Inevitable service disruptions could impact competition and raise consumer prices. Widespread service issues that typically occur in such transitions would quickly overwhelm any theoretical cost savings to be derived from the transition.

As Neustar’s Petition makes clear, the NANC is being deprived of critical input needed to make an informed selection. The Petition identifies several critical deficiencies in the RFP and the selection process—foremost among them a severe lack of transparency and insufficient involvement of key stakeholders. In addition, the Petition demonstrates that the RFP published in August of 2012 fails to account for all of the services *currently* provided by the NPAC, the costs associated with any NPAC migration (which are likely to fall disproportionately on smaller providers), the security and continuity of service risks inherent in any technology transition of this magnitude, and emerging requirements arising out of the IP transition now underway.

Furthermore, the NANC must ensure that it is fully informed about the RFP procedures, including specific Future of NPAC Subcommittee (FoNPAC) statements regarding Neustar’s October 21, 2013 request for additional rounds of proposals, which directly relate to the RFP process.<sup>4</sup> Under the non-disclosure agreement, the North American Portability Management LLC (NAPM) is specifically permitted to share this information with NANC members, and we believe it should do so.

The FCC and the NANC have a responsibility to promote the public interest and an obligation to assess these factors prior to selection. They must satisfy themselves that the selection process will result in the delivery of the most valuable solution for consumers and service providers. The NPAC is simply too important to the nation’s evolving telecommunications infrastructure and future innovation to allow an inadequate vendor selection process to compromise the level of service provided over the next five-to-seven years. Without prompt action to inform participants in the NANC process, consumers, small telecommunications service providers, public safety, and competition will be harmed.

Accordingly, Neustar calls on the Commission to act immediately to ensure that:

- The rules governing the selection process are transparent, consistent with the public interest, and ensure that decision-makers have the broadest access to critical information from all stakeholders;

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<sup>4</sup> See Letter from Aaron M. Panner, Counsel to Neustar, to Marlene H. Dortch, FCC Secretary, CC Dkt. No. 95-116, WC Dkt. Nos. 07-149, 09-103 (filed Jan. 29, 2014).

- The Commission should clarify the nature of, and the rules that apply to, the selection process. Neustar maintains that this is a private contract, while others have recently argued that it is a government procurement.<sup>5</sup> To the extent the Commission now views this as a government procurement, it should make known which Federal Acquisition Regulations apply and the source of the WCB's authority to conduct such a procurement.
- Likewise, the Commission also should clarify the ex parte status of communications concerning the LNPA selection process to avoid prejudice to the parties and the public, as the Commission has done in similar cases.<sup>6</sup>
- The outcome of the selection process delivers the highest available value to communication service providers and consumers by considering additional competitive offers from all vendors;
- The selection process adequately accounts for and proactively addresses the risks, costs, and potential adverse consequences of an industry-wide NPAC transition on all constituents, including impacts that result from service degradation;
- The vendor selection process fully addresses the Commission's requirements for the IP transition; and
- The consequences of the significant delays in the RFP schedule to date are assessed and mitigated.

As the current steward of the largest and most complex number portability program in the world, Neustar has a unique perspective on the extent to which millions of consumers and thousands of service providers rely on the uninterrupted availability of this service. As that steward, Neustar feels a responsibility to articulate concerns arising from the procedural irregularities in the selection process and the material deficiencies in the record. Action by the Commission to quickly correct these deficiencies can ensure that the United States continues to benefit from the best available local number portability services.

Neustar is mindful of the need to reach a prompt and legitimate completion of the NPAC selection process. The fact that the selection process is behind schedule only makes it more imperative to address these concerns now, by first soliciting public comments on Neustar's Petition. Neustar believes that there is sufficient time to review comments, address the deficiencies in the selection process, and allow for an FCC decision by no later than June 30. While this approach involves a short-term delay, it is necessary to protect the process and to

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<sup>5</sup> See, e.g., Telcordia Feb. 6, 2014 Ex Parte Letter at 3.

<sup>6</sup> See, e.g., *Wireless Telecommunications Bureau and Office of Engineering and Technology Exempt Certain Ex Parte Presentations in GN Dkt. No. 13-185*, Public Notice, 28 FCC Rcd 1556 (2013) (*Ex Parte PN*).



## APPENDIX

Neustar asks that the Commission immediately address the following concerns with the LNPA selection process and RFP:

1. The RFP fails to define the approach, schedule, costs, or parameters of any vendor transition.
  - Impact on Consumers. Nowhere do the RFP documents detail the specific requirements, schedule, approach, costs, or parameters of a transition between LNPAs. This oversight could cost consumers hundreds of millions of dollars. Despite the NPAC's critical role in the telecommunications system, the RFP failed to specify in detail what the next LNPA must do to ensure that any transition does not disrupt service or force the industry and consumers to bear significant costs.
  - Impact on Small Carriers. Industry commentators have cautioned that a transition poses significant risks, which may be borne disproportionately by smaller carriers.<sup>7</sup> Changes in technology or service disruptions directly and immediately affect the stability of service-provider operations. Because it is the only real-time system to disseminate rating, routing, and billing information, the smaller carriers are totally reliant on a functioning NPAC. As they have told the FCC in recent filings, it is their "lifeline."<sup>8</sup> Any disruption will be material. Small carriers therefore require full transparency on transition issues so that contingency plans can be implemented. Smaller telecommunications service providers, which are heavy users of the NPAC, will bear a disproportionate burden from the costs and risks of any transition. Those added costs reduce their ability to compete against larger, better-financed providers.
  - Maintaining the Highest Service Levels. Competition depends on local number portability. Since 1997, Neustar has served as the LNPA with uniformly excellent reviews and unmatched technical ability, making it easy for consumers and businesses to freely change communications service providers.<sup>9</sup> In North America, Neustar's service allows a consumer to walk into a retail outlet and walk out minutes later with the same number associated with a new device and service provider.<sup>10</sup> In other countries, the process can take significantly longer. For example, Indian customers

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<sup>7</sup> See Standish Grp. Int'l, *Big Bang Boom*, at 2 (2014), available at [blog.standishgroup.com/BigBangBoom.pdf](http://blog.standishgroup.com/BigBangBoom.pdf); 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>.

<sup>8</sup> See COMPTTEL Feb. 7, 2014 Ex Parte Letter, Attach. at 3; Peerless Network Feb. 21, 2014 Ex Parte Letter at 1.

<sup>9</sup> Under Neustar's stewardship, the NPAC has achieved extraordinary levels of reliability and effectiveness, achieving 99.999 percent reliability. See Yankee Group White Paper at 3.

<sup>10</sup> *Id.*

may be out of service for hours during the transition to their new carrier and the porting process can take weeks to complete.<sup>11</sup>

2. Key vendor requirements should be an open and transparent part of the selection process.
  - *Preserving the LNPA's Neutrality.* The importance of neutral administration of the NPAC to fair treatment of competing carriers cannot be overstated, and neutrality remains critical to the basic right of consumers to freely access competitive information networks.<sup>12</sup> Even the perception of bias endangers public confidence in number portability. The Commission should clarify that information related to the satisfaction of the neutrality requirements is not proprietary, allowing interested parties to comment on the consistency of offerors' neutrality with the FCC's rules and the RFP.
3. Procedural ambiguities and irregularities in the selection process threaten to prejudice the parties and the public, and to deprive stakeholders of the best possible offers from all offerors. The free and transparent flow of relevant information among offerors and selectors has been chilled by the lack of clear rules.<sup>13</sup>
  - *Process Flaws and Fairness to Offerors.* Thus far, the selection process has lacked clear rules, neither adhering to basic transparency requirements under the Commission's rules, nor basic procurement procedures.<sup>14</sup> The FCC is overseeing the selection of a vendor to perform a contract, but has cited no acquisition regulations and has not involved its contracting officer. In fact, the FCC has not indicated whether this is a private contract or government procurement, or the ex parte status of communications concerning the LNPA selection process. This uncertainty has left participants with little guidance and has had a significant impact on procedures, ex parte communications, and the disclosure of information. For example, potential vendors have not been informed explicitly about ground rules for communication with the FCC or with NANC members about the contract, nor have they been referred to any existing guidance to resolve their questions. To avoid such uncertainty, the Commission should specify whether the LNPA process is

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<sup>11</sup> 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](http://www.neustar.biz/corporate/docs/india_experience_with_mobile_number_portability.pdf).

<sup>12</sup> 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.”).

<sup>13</sup> The Wireline Competition Bureau's recent letter to the NANC Chair highlights “concerns over the fairness of this process so far.” 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). Neustar shares the Commission's concerns about “irregularities or improprieties” in these proceedings. Confusion in this area threatens to chill the open communication needed to ensure the best possible result.

<sup>14</sup> See, e.g., Neustar Petition at 32-36.

a private contract or government procurement, and whether this is a permit-but-disclose proceeding, a restricted proceeding, or something different for ex parte purposes.<sup>15</sup>

- Consulting Key Stakeholders. The RFP was developed without direct participation from many important affected constituencies. Consumers, regulators, and service providers must therefore be included in setting expectations for the next-generation LNPA. The Commission should direct the Bureau to ensure that consumer and small business advocates, small and competitive telecommunications service providers, law enforcement and public safety agencies, and state regulators have an opportunity to be heard.<sup>16</sup>
  - Fairness Effects on Industry and the Public. 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 that best promotes competition, serves consumers, and supports public safety.
4. Key substantive requirements, including current requirements needed to address critical public safety and national security issues as well as requirements to address evolving needs such as the IP transition, have been left out of or glossed over in the RFP.
- Existing Services. The RFP's criteria fail to account for all of the services provided by the current NPAC. For example, the RFP does not specify, let alone require, the services the LNPA currently provides, including disaster recovery and emergency preparedness; ecosystem management; and mass port processing. Without additional clarity, a new vendor may lack the capabilities and expertise to perform these services—and may expect consumers to pay more for them.

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<sup>15</sup> Last year, for example, the Wireless Telecommunications Bureau and the Office of Engineering and Technology issued a clarifying public notice in the AWS-3 proceeding regarding communications among the public, the FCC, Congress, the National Telecommunications and Information Administration (NTIA) and other agencies that involved recommendations produced by the Commerce Spectrum Management Advisory Committee (CSMAC), which, like the NANC, is a federal advisory committee. *See Ex Parte PN*, 28 FCC Rcd at 1556. Finding that “the free flow of information during the meetings is essential to gaining an understanding of the issues,” the public notice clarified how and when the Commission would apply its ex parte procedures in the face of considerable ambiguity about the scope of those rules. *Id.* at 1. In this case, the applicable rules are every bit as ambiguous as in the AWS-3 proceeding, if not more so. Indeed, the complete lack of guidance as to the status of communications among the public, the Commission, the NANC, and the NAPM means that every party in interest would benefit from a clear, transparent and timely Commission ruling on the status of communications that concern the LNP selection process.

<sup>16</sup> Small carriers have appealed directly to the Commission for consideration of the harm they may suffer from excessive transition costs or disruption. *See, e.g.*, COMPTTEL Feb. 7, 2014 Ex Parte Letter; Peerless Network Feb. 21, 2014 Ex Parte Letter.

- *Public Safety.* The LNPA plays a critical role in public safety. Law enforcement officials have come to expect the highest level of service when seeking assistance in identifying the service provider associated with a particular telephone number in order to issue a subpoena. While the RFP requires these “services,” it does not provide adequately detailed specifications to ensure the expected level of performance. 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.<sup>17</sup> 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 mandated.
- *National Security.* At the same time, the LNPA’s vast influence over the telecommunications system has serious national security implications. An NPAC failure could render millions of Americans unreachable. The Commission must ensure that the LNPA implements (and the RFP reflects) state-of-the-art traditional and cyber security measures to protect the NPAC from all threats.

The cyber security landscape has changed dramatically since the RFP was issued. The size and scope of the cyber threat has grown significantly, with the number and scale of sophisticated attacks and breaches being reported dramatically increasing across all sectors and industries. As Verizon noted in its 2013 Data Breach Investigations Report, “Perhaps more so than in any other year, the large scale and diverse nature of data breaches and other network attacks took center stage” in 2012.<sup>18</sup> In a new Executive Order, the President has tasked federal agencies, including the FCC, with increasing their focus on whether current cyber security requirements are sufficient, and how they can establish requirements based on the Cybersecurity Framework created pursuant to the Executive Order.<sup>19</sup> Any organization that serves and supports highly sensitive components of critical infrastructure—including the LNPA—must be evaluated against this backdrop.

- *IP Transition.* The RFP criteria fail to adequately account for the IP transition. As the Commission acknowledges, the IP transition raises a number of “challenges and opportunities” for the nation’s numbering systems, and getting them right “is essential to

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<sup>17</sup> 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](http://www.neustar.biz/corporate/docs/yankee_npac_whitepaper.pdf) (Yankee Group White Paper).

<sup>18</sup> Verizon, *2013 Data Breach Investigations Report*, available at <http://www.verizonenterprise.com/DBIR/2013/>.

<sup>19</sup> Exec. Order No. 13636, 78 Fed. Reg. 33 (2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-02-19/pdf/2013-03915.pdf>.

preserving core values of competition and consumer protection.”<sup>20</sup> Yet the RFP devotes only a few lines and two nebulous requirements to the IP transition. Thus, the RFP mandates little, if any, concrete action by the LNPA and prevents the Commission from conducting a true “apples to apples” comparison between proposals. The RFP should include specific criteria to ensure that the selected NPAC/SMS can accommodate and facilitate the IP transition.

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<sup>20</sup> *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).