ACCEPTED/FILED

APR 25 2014

Federal Communications Commission
Office of the Secretary

Public Service Commission of the District of Columbia
1333 H Street, N.W., 2nd Floor, West Tower
Washington, D.C. 20005
(202) 626-5100
www.dcpsc.org

Betty Ann Kane
Chairman

April 24, 2014

PUBLIC VERSION – REDACTED FOR PUBLIC INSPECTION

TRANSMITTED BY ELECTRONIC MAIL

Julie A. Veach
Chief
Wireline Competition Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

RE: **Recommendation of a Contract Vendor for the Local Numbering Portability Administrator (WC Docket No. 09-109, CC Docket 95-116)**

Dear Ms. Veach:

On behalf of the North American Numbering Council ("NANC"), I hereby submit the accompanying letter with the NANC's recommendation to the Federal Communications Commission ("FCC") of a contract vendor to serve as the Local Number Portability Administrator ("LNPA") that was agreed to by the NANC members, meeting in closed session on March 26 at the FCC's offices, which had previously signed a non-disclosure agreement. The accompanying letter also includes the NANC's LNPA Selection Working Group's ("SWG") "Report to NANC on LNPA Vendor Selection Recommendation of the Future of the NPAC (Number Portability Administration Center ("NPAC")) Subcommittee ("FoNPAC")" ("SWG Report") and related SWG Report exhibits.

In addition, by letter dated February 11, 2014, you directed the NANC, working in conjunction with the North American Portability Management LLC ("NAPM"), to include in its ultimate LNPA vendor(s) selection recommendation the following:

- A review and evaluation of all claims of potential unfairness, including a claim that a bidder "'has obtained confidential, non-public information about its competitive standing and price relative to other bidders' and an allegation that the LNPA selection 'process has been flawed'";

- A review and evaluation of "whether there have been any attempts, outside of the ordinary process contemplated by the Request for Proposal ("RFP"), to influence the NANC or NAPM representatives that have been involved in the selection process";

- "A detailed description of steps taken to review these concerns regarding the process";

- Documentation of any "irregularities or improprieties by including relevant facts, explaining any actions taken or not taken, and, where appropriate, proposing resolutions or further action to address them as necessary"; and

- "Findings as to whether the LNPA selection process was conducted in a fair and impartial matter, as contemplated by the (FCC's) March 2011 Order."

In response to your direction to the NANC, I requested the NAPM and SWG to each prepare a report to the NANC that responds to your requests as detailed above. On March 20, 2014, the NAPM submitted to the NANC the "Report of the North American Portability Management LLC – In Response to the Wireline Competition Bureau Letter, dated February 11, 2014" with four attachments. On April 14, 2014, the SWG submitted to the NANC the "LNPA Selection Working Group (SWG) Selection Process Report" with three Exhibits. Both the NAPM and SWG vendor selection process reports were reviewed by the NANC and without objection are submitted by the NANC with the accompanying letter in response to your requests of February 11, 2014.

On behalf of the NANC, I respectfully request that, pursuant to Section 0.459 of the Commission's Rules, 47 C.F.R. § 0.459, the Commission withhold from public inspection and afford confidential treatment, in accordance with Section 552(b)(4) of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4), and Sections 0.457(d)(2) and 0.459(b) of the Commission's Rules, 47 C.F.R. §§ 0.457(d)(2), 0.459(b), to the aforementioned accompanying letter, SWG Report and exhibits, and NAPM and SWG vendor selection process reports with attachments and exhibits.

Section 552(b)(4) of the FOIA permits an agency to withhold from public disclosure any information that qualifies as "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4). Section 0.457(d)(2) of the Commission's Rules allows persons submitting materials that they wish withheld from public inspection in accordance with Section 552(b)(4) to file a request for non-disclosure. 47 C.F.R. § 0.457(d)(2). The requirements governing such requests are set forth in Section 0.459(b).

In accordance with Section 0.459 of the Commission's rules, on behalf of the NANC, I hereby submit the following:

(1) *Identification of Specific Information for Which Confidential Treatment is Sought (Section 0.459(b)(1)).* On behalf of the NANC, I request confidential treatment of:

1. The accompanying letter (from Betty Ann Kane, Chair, NANC, to Ms. Julie A. Veach, Chief, Wireline Competition Bureau, FCC, dated April 24, 2014) regarding the NANC's recommendation to the FCC of a contract vendor to serve as the LNPA;

2. The SWG's "Report to NANC on LNPA Vendor Selection Recommendation of the Future of the NPAC Subcommittee ("FoNPAC")", dated February 26, 2014, (including Exhibit A, 6 pages) and SWG Report Exhibits:

a. Exhibit B – "Local Number Portability Administration Request for Proposal Evaluation Summary and Selection Report", by the Future of NPAC, A Subcommittee of the NAPM LLC (12 pages); and

b. Exhibit C – "Selection Report Overview", by the Future of the NPAC Subcommittee, dated 2/12/2014 (12 pages).

3. The NAPM's "Report of the North American Portability Management LLC – In Response to the Wireline Competition Bureau Letter, dated February 11, 2014" with four attachments, dated March 20, 2014 (98 pages); and

4. The SWG's "LNPA Selection Working Group (SWG) Selection Process Report", dated April 14, 2014 (including Exhibit A, 19 pages). (Items #3 and #4 are referenced as "vendor selection process reports".)

(2) *Description of Circumstances Giving Rise to Submission (Section 0.459(b)(2)).* The accompanying letter, on behalf of the NANC, SWG Report and exhibits and vendor selection process reports and attachments and exhibits relates to the NANC's vendor selection recommendations for the competitively-bid LNPA contract.

(3) *Explanation of the Degree to Which the Information is Commercial or Financial, or Contains a Trade Secret or is Privileged (Section 0.459(b)(3)).* The accompanying letter, on behalf of the NANC, SWG Report and exhibits and vendor selection process reports and attachments and exhibits contains commercially sensitive information that may be withheld from public disclosure under FOIA Exemption 4. The Commission has long recognized that, for purposes of Exemption 4, "records are 'commercial' as long as the submitter has a commercial interest in them." *Robert J. Butler,* 6 FCC Red 5414, 5415 (1991) (citing *Pub. Citizen Health Research Group v. F.D.A.,* 704 F.2d 1280, 1290 (D.C. Cir. 1983); *Am. Airlines v. Nat'l Mediation Bd.,* 588 F.2d 863, 868 (2d Cir. 1978)). In this regard, the accompanying letter, on behalf of the NANC, SWG Report and exhibits and vendor selection process reports and attachments and exhibits contains sensitive financial and business information that constitute commercial information which may be withheld under FOIA Exemption 4.

(4) *Explanation of the Degree to Which the Information Concerns a Service that is Subject to Competition (Section 0.459(b)(4)).* The accompanying letter, on behalf of the NANC, SWG Report and exhibits and vendor selection process reports and attachments and exhibits contains information that is subject to the competitive bid for the LNPA contract.

(5) *Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (Section 0.459(b)(5)).* The accompanying letter, on behalf of the NANC, SWG Report and exhibits and vendor selection process reports and attachments and exhibits are confidential because their public release would likely cause competitive harm to one or both of the vendors that submitted bids for the LNPA contract. Providing the competing vendors for the LNPA contract with access to bid information contained in the accompanying letter, SWG Report and exhibits and vendor selection process reports and attachments and exhibits would competitively harm one or both of the vendors. The D.C. Circuit has found parties do not have to "show actual competitive harm" to justify confidential treatment. *Pub. Citizen Health Research Grp.,* 704 F.2d at 1291 (quoting *Gulf & Western Indus. v. U.S.,* 615 F.2d 527, 530 (D.C. Cir. 1979)). Rather, "'[a]ctual competition and the likelihood of substantial competitive injury' is sufficient to bring commercial information within the realm of confidentiality." *Id.*

(6) *Identification of Measures Taken to Prevent Unauthorized Disclosure (Section 0.459(b)(6)).* The NANC members have signed a non-disclosure agreement and treat the information contained in the accompanying letter, SWG Report and exhibits, and vendor selection process reports and attachments and exhibits as highly confidential and have committed not to publicly

disclose this information. The NANC met in closed session, pursuant to guidance from the FCC, in order to review the SWG's vendor selection recommendations and the aforementioned vendor selection process reports. Access to the SWG Report and exhibits prior to the NANC closed meeting were limited to only the NANC members that had previously signed the non-disclosure agreement and were provided a secure password by the FCC Designated Federal Officer.

(7) *Identification of Whether the Information is Available to the Public and the Extent of Any Previous Disclosure of Information to Third Parties (Section 0.459(b)(7)).* The NANC has not previously disclosed the contents of the accompanying letter, SWG Report and exhibits and vendor selection process reports and attachments and exhibits to the public.

(8) *Justification of Period During Which the Submitting Party Asserts that the Material Should Not be Available for Public Disclosure (Section 0.459(b)(8)).* The accompanying letter, on behalf of the NANC, SWG Report and exhibits and vendor selection process reports and attachments and exhibits should not be released for public inspection until such time as there is a final and non-appealable FCC order ending this proceeding and all information concerning vendors' proposals is made public.

For the foregoing reasons, on behalf of the NANC, I respectfully request that the Commission withhold the accompanying letter, SWG Report and exhibits and vendor selection process reports and attachments and exhibits from public inspection.

Please feel free to contact me or my Policy Advisor, Cary Hinton (chinton@psc.dc.gov); the LNPA Selection Working Group Tri-Chairs: Ann Berkowitz, Verizon (aberkowitz@verizon.com), Tiki Gaugler, XO Communications (Teresa.K.Gaugler@xo.com), and Commissioner Geoffrey G. Why, Massachusetts Department of Telecommunications and Cable (geoffrey.g.why@state.ma.us); or the NAPM Co-Chairs: Tim Decker, Verizon (timothy.decker@verizon.com) and Tim Kagele, Comcast (Tim_Kagele@cable.comcast.com) if you or members of your staff have any questions regarding the NANC's LNPA vendor selection recommendations or the vendor selection process reports.

Sincerely,

Betty Ann Kane
Chairman
North American Numbering Council

cc: Ann Stevens, FCC
Sanford Williams, FCC
NANC Members