

May 16, 2014

**EX PARTE**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Re: *Telephone Number Portability, et al.*, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109

Dear Ms. Dortch:

In response to a question from Wireline Competition Bureau (“Bureau”) staff, Telcordia Technologies, Inc., d/b/a iconectiv (“Telcordia”) responds additionally to Neustar’s statement that it would be willing to have all NPAC bid documents be publicly available.<sup>1</sup> Such an approach would be extremely anticompetitive if re-bidding on this contract were to occur in the future—as Neustar repeatedly continues to request. In fact, any public release of Telcordia’s confidential and proprietary technical, pricing, and operational information, by or at the direction of the Commission, would be contrary to the Trade Secrets Act, 18 U.S.C. § 1905.

As Telcordia explained in its letter of May 2, 2014,<sup>2</sup> the Commission should move promptly to make its selection of the Local Number Portability Administrator (“LNPA”), in accordance with the schedule it set forth in May 2011 and consistent with the repeated statements that the successor LNPA would be in place by the expiration of the current contract in June 2015. This procurement has already taken three years since the Bureau established the selection process because the Commission has given extensive opportunity for public input on the Request for Proposal, the Technical Requirements Document, the Vendor Qualification Statement, and the process itself. If the Commission does not now move to decision, but instead seeks further comment, the practical reality is that it will transform what should be a selection based on the technical merits into a contest over which bidder can mount the most effective industry campaign. As the incumbent, Neustar spent \$6 million in the first quarter of 2014 on such a campaign. If the contract is going to be decided by which company can spend more on a public relations campaign and highly paid consultants, the message will be clear—no one other than the incumbent should ever again try to bid on this contract. Unlike the incumbent, a challenger has no contract and thus must already bear the costs of preparing to perform without

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<sup>1</sup> Ex Parte Letter from Aaron M. Panner, Counsel for Neustar, to Marlene Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (filed May 6, 2014).

<sup>2</sup> Ex Parte Letter from John T. Nakahata, Counsel for Telcordia, to Marlene Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (filed May 2, 2014).

any supporting revenue stream; a multimillion dollar public relations and industry campaign would significantly add to the barriers to entry. Further delays that were *never* contemplated by the schedules that the Bureau permitted to be released—and that cannot occur consistent with the Bureau’s statements that decisions would be made in time for a July 2015 implementation—are no way to engender “competition, competition, competition.” Instead, they will snuff it out.

In order to enable an Application for Review by the full Commission or as part of the judicial-review process, the Commission may have to consider whether, or on what terms, to release bidders’ proposals, the NANC recommendation and reports, and the underlying analyses by the FoNPAC and Selection Working Group (“SWG”). Before releasing any such information, the Commission must provide bidders the opportunity to designate their bids as highly confidential. Telcordia’s bids include not just specific pricing proposals, but also specific details as to how Telcordia would structure, operate, and implement its Local Number Portability solution. Disclosing that information would allow competitors—both in the U.S. and internationally—to free-ride on Telcordia’s innovation. This information is the type of highly competitive, sensitive information related to a specific customer opportunity to which the Commission, in other contexts, has limited access to outside counsel who are not involved in competitive decision-making. That confidentiality protection must also extend to all information derived from such highly confidential information, including all NANC, FoNPAC, and SWG evaluation and recommendation documents. Similarly, Telcordia’s neutrality submissions contain confidential, non-public Ericsson financial and customer-related information, as well as confidential, non-public information regarding Telcordia’s subcontractors.

Neustar, of course, offers to make its bid public—it has concluded that its bid was uncompetitive anyway, meaning that public release of bids will only benefit Neustar, while causing maximum harm to Telcordia. All along, Neustar has been trying to determine how large of an incumbency premium it could seek and still retain the LNPA contract—and its actions show that it believes its bid miscalculated the premium it could demand and was therefore too high. It would destroy the competitive process if Neustar were now given Telcordia’s proprietary pricing, and an opportunity to revamp its bid using that trade secret information. Moreover, Neustar would be able to learn what technical innovations Telcordia proposed. By analogy, such sensitive pricing and technical information is *never* publicly disclosed during a pending federal procurement, and, in fact, such disclosure in a procurement would be barred by the Procurement Integrity Act, 41 U.S.C. § 2102. In short, the disclosure that Neustar seeks is antithetical to a fair and competitive bid process.

The Commission should not be misled into believing that it can obviate Neustar’s (meritless) Administrative Procedure Act arguments without a lengthy delay that will necessitate extending the current contract if anyone other than Neustar is selected. The rulemaking process that Neustar demands, with attendant delays for Federal Register publications, cannot possibly be completed in less than six months. Seeking further comment will cost carriers and consumers money, and it will destroy entirely the credibility of the Commission’s competitive bidding process for seeking numbering administrators. It will also set a dangerous precedent for all future competitive bid proceedings on any subject.

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On May 15, 2014, I spoke on behalf of Telcordia with Lisa Gelb, Deputy Bureau Chief of the Wireline Competition Bureau, to convey the substance of this letter.

Sincerely,



John T. Nakahata  
Mark D. Davis  
Anne K. Langer

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Inc., d/b/a/ iconectiv*

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