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June 2, 2014

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

Electronically Filed

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

Dear Ms. Dortch:

I write on behalf of Neustar, Inc., in response to the May 16, 2014, ex parte letter submitted by Ericsson,[1] and to address the appropriate treatment of information submitted in connection with responses to the 2015 LNPA RFP. Neustar has demonstrated that an NPRM is required if the Commission wishes to alter any of the existing rules adopted in 1997. The Commission should therefore focus on how to ensure that all interested parties have a meaningful opportunity to evaluate and comment on the NANC's recommendation for selection of the LNPA for the next contract period.

We make two main points. First, there is no basis for Ericsson's argument that it can shield from public consideration the facts relevant to its assertion that it can satisfy applicable neutrality requirements. Ericsson has unusually extensive contractual relationships with several telecommunications service providers; the nature and extent of those relationships must be made public so that the Commission can develop a record to facilitate its enforcement of the

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[1] Telcordia Technologies Inc., d/b/a iconectiv ("Telcordia"), is a part of Ericsson; unless context dictates otherwise, we refer to the entity as "Ericsson." When Ericsson acquired Telcordia, it announced that "Telcordia will long-term be fully integrated into Ericsson." Telcordia, *Telcordia is now part of Ericsson*, *available at* www.ericsson.com/thecompany/company_facts/businesses/acquisitions/telcordia.

requirement under section 251(e)(1) that any numbering administrator be "impartial."[2] The industry and other affected parties must have a fair opportunity to comment on Ericsson's suitability to serve as a fair and impartial numbering administrator.[3]

Second, the Commission must ensure that commenting parties have access to information concerning the substance of the proposals and the NANC's recommendation while making necessary provisions to protect confidential information. The Commission should accordingly make such information publicly available. As Ericsson acknowledges, the Commission can protect competitively sensitive or proprietary information through a protective order.

1. Ericsson states (at 2) that its "neutrality submissions contain confidential, non-public Ericsson financial and customer-related information, as well as confidential, non-public information regarding Telcordia's subcontractors." But Ericsson should not be permitted to continue to pursue the LNPA contract if it is unwilling to disclose information supporting its claim of neutrality or ability to perform. As we have explained previously and as Ericsson does not contest, the evaluation of vendor neutrality was removed from the NAPM/NANC evaluation process at Ericsson's request. Accordingly, there has been no examination of the information that Ericsson submitted in support of its neutrality claim. Consequently, the Commission must require any party seeking consideration to serve as LNPA to make public complete information concerning facts relevant to its claim of neutrality and ability to perform.

The Commission should not and cannot lawfully weaken its enforcement of the requirement – imposed by the Act and by the Commission's rules and prior orders – that the LNPA maintain strict neutrality. As former Commissioner Harold Furchtgott-Roth explained in a white paper submitted in this docket:

> Neutrality is as important today as ever. . . . A failure of neutrality of the LNPA would undermine the integrity of the competitive telecommunications marketplace that the Congress and the FCC sought to establish in the 1990s. Of necessity, the LNPA is privy to competitively sensitive information that could be exploited if the LNPA was not unquestionably neutral. . . . A non-neutral LNPA could also manipulate the pace of porting to benefit its affiliate. . . . Even without such behavior, a non-neutral LNPA could create the appearance of impropriety

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[2] *See* 47 U.S.C. § 251(e)(1).

[3] The circumstances that cast doubt on Ericsson's ability to serve as an impartial LNPA also underscore the need for independent Commission review of the selection process, which included significant roles for several telecommunications service providers with which Ericsson has major contractual relationships.

> and could cause lingering doubt among competitors and consumers about the fairness of the process.[4]

The need for rigorous review of Ericsson's neutrality claims – and full public disclosure of the facts underlying those claims – is critical given Ericsson's deep connections to individual companies and specific sectors in the telecommunications industry. A look only at what is publicly available finds serious reasons for concern:

- Ericsson is the world's largest producer of wireless telecommunications network equipment; forty percent of all mobile traffic is routed through equipment manufactured and serviced by Ericsson.[5]

- Ericsson also manages networks on behalf of telecommunications service providers ("TSPs"); under the managed services model, TSP network employees often transfer to Ericsson, and Ericsson "assume[s] responsibility for activities such as designing, building, operating and managing day-to-day network operation" for TSPs' networks.[6] Globally, Ericsson has more than one billion subscribers on its managed networks.[7]

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[4] Harold Furchtgott-Roth, *The importance of neutrality in number portability administration*, CC Docket No. 95-116; WC Docket No. 07-149; WC Docket No. 09-109, at 20-21 (Sept. 13, 2012), *available at* http://apps.fcc.gov/ecfs/document/view?id=7022013438.

[5] *See* Bloomberg, *Ericsson Chairman Says Equipment Demand Looks Positive This Year*, http://www.bloomberg.com/news/2013-04-06/ericsson-chairman-says-equipment-demand-looks-positive-this-year.html; Ericsson, *Company Facts*, *available at* http://www.ericsson.com/thecompany/company_facts.

[6] Ericsson Press Backgrounder, *Managed Services – Partnerships for Superior Customer Experience, available at* http://www.ericsson.com/res/thecompany/docs/press/backgrounders/managed_services_press_backgrounder.pdf, at 1 (Apr. 2014); Ericsson, *Managed Services*, *available at* http://www.ericsson.com/ourportfolio/telecom-operators/managed-services-1.

[7] Ericsson, *Annual Report 2013 – Managed Services*, *available at* http://www.ericsson.com/thecompany/investors/financial_reports/2013/annual13/en/our-business/solutions/managed-services.

- Ericsson announced in July 2009 a seven-year, five-billion-dollar agreement to manage the network of a major U.S. wireless carrier, absorbing some 6,000 of the carrier's employees in the process.[8]

- And in 2010 Ericsson announced a five-year contract worth four to five billion dollars with the same carrier.[9]

- In 2012, Ericsson announced a four billion dollar contract with another major U.S. wireless carrier; when it announced the transaction, Ericsson touted its "long-standing relationship with the carrier."[10]

- Just this morning, Ericsson announced a major contract to replace this carrier's billing systems.[11]

Ericsson is a manufacturer of telecommunications network equipment and barred from serving as LNPA under section 52.26(a) of the Commission's rules. Moreover, it appears to be aligned with a particular segment of the telecommunications industry in violation of section 52.21(k) of those rules. Ericsson also appears to be "subject to undue influence by parties with a vested interest in the outcome of numbering administration" and is involved in "contractual or other arrangement[s] that would impair its ability to administer the NPAC/SMS fairly and impartially" in violation of section 3.4 of the RFP's Vendor Qualification Statement. In short, Ericsson does not appear to qualify as an "impartial" administrator as required by section 251(e) of the Communications Act.

Given the appearance of partiality and the public facts concerning Ericsson's interests in and involvement with the telecommunications industry, competitors who may lack the same favored relationship with Ericsson will have no confidence that the LNPA will deal with them

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[8] Ericsson Press Backgrounder, *Managed Services – Partnerships for Superior Customer Experience, available at* http://www.ericsson.com/res/thecompany/docs/press/backgrounders/managed_services_press_backgrounder.pdf.

[9] Ericsson Press Release, *Ericsson selected for Sprint's Network Vision Program, available at* http://www.ericsson.com/news/1469429.

[10] Ericsson Press Release, *Ericsson selected by T-Mobile USA for LTE and network transformation, available at* http://www.ericsson.com/news/1609537.

[11] Ericsson Press Release, *T-Mobile selects Ericsson for billing solution and new customer experience, available at* http://www.ericsson.com/news/1789370.

impartially. Likewise, such service providers will be understandably reluctant to trust the LNPA with competitively sensitive information that is required for efficient LNP administration. These concerns cannot be overcome without full disclosure of Ericsson's entanglements as well as the measures that Ericsson proposes to take to come into neutrality compliance. It is also necessary to discover the extent to which the NAPM/NANC relied on these facts or assumptions to reach their recommendations and whether such action comports with the applicable legal obligations.

Furthermore, the Commission has required comprehensive public disclosure in comparable circumstances in the past. Specifically, when Lockheed Martin proposed transferring ownership of Neustar to Warburg, Pincus & Co., the Commission published a public notice to "ensure the most comprehensive review" in a "matter of significant public interest."[12] Not only did the public notice provide a reasonably detailed description of the proposed transaction, but the Commission also made available the request in its entirety. The Bureau followed up with dozens of questions about the terms and conditions of the transaction, including business plans and detailed financial information, a detailed explanation of Warburg, Pincus's financial and corporate structure, as well as its financial holdings and investments, and "all of the telecommunications-related holdings" of Warburg, Pincus.[13] The answers to all of those questions were publicly filed.[14] The parties subsequently filed an amended request, and the Commission again sought comment and made the request available to the public.[15] Again, complete information concerning the request was made available to the public. The public is entitled to no lesser degree of transparency today. Indeed, given the competitive selection process, the inability to satisfy neutrality requirements should be a basis for disqualification.

2. Ericsson claims that "any public release of [its] confidential and proprietary technical, pricing, and operational information" would be "anticompetitive if re-bidding . . . were

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[12] *See* Public Notice, *FCC Seeks Comment on Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Services Business*, DA 99-117, CC Docket No. 92-237, NSD File No. 98-151 (CCB Jan. 7, 1999).

[13] *See* Letter from Cheryl A. Tritt, J.G. Harrington, Philip L. Verveer, et al., to Ms. Anna M. Gomez, Federal Communications Commission, CC Docket No. 92-237, NSD File No. 98-151 (filed Feb. 16, 1999).

[14] *See id.*

[15] *See* Public Notice, *Common Carrier Bureau Seeks Comment on Lockheed Martin IMS Corporation and Warburg, Pincus & Company Amended Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Services Business*, DA 99-1647, CC Docket No. 92-237, NSD File No. 98-151 (CCB Aug. 17, 1999).

to occur" and would be "contrary to the Trade Secrets Act."[16] At the outset, that argument underscores the value of undertaking an additional round of bidding now, before information pertinent to evaluation of the NANC recommendation is made available. In that way, the Commission can obtain the benefit of any additional proposals, and avoid evaluating a recommendation that was made pursuant to a process that failed to obtain vendors' most competitive proposals.[17]

For the Commission's required NPRM process to satisfy legal requirements, the public must be afforded access to the proposals and evaluation materials to be able to determine whether the NANC process has taken adequate account of factors such as the cost and risk of transition, plans for the change to all-IP networks, and impacts on public safety and national security. The Commission must therefore design a process that accommodates the submitting parties' legitimate interest in protecting information that is genuinely competitively sensitive or proprietary, while ensuring that interested parties, including Neustar, do not face unwarranted obstacles in gaining access to relevant data. To the extent any party that has submitted a proposal wishes to maintain the confidentiality of specific technical or pricing information, the appropriate mechanism is the one that Ericsson admits is available: the party seeking to prevent disclosure must make a request for confidential treatment containing an explanation for the request. To the extent necessary, the Commission can then put in place a protective order that will ensure an appropriate level of protection for any confidential or highly confidential information that a bidder identifies.

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[16] Letter from John T. Nakahata, Counsel to Telcordia Technologies, inc., to Marlene H. Dortch, Federal Communications Commission, CC Docket No. 95-116; WC Docket Nos. 07-149 & 09-109, at 1 (filed May 16, 2014).

[17] *See* Letter of Aaron M. Panner, Counsel to Neustar, Inc., to Ms. Julie Veach and Mr. Jonathan Sallet, Federal Communications Commission, CC Docket No. 95-116, WC Docket No. 07-149, WC Docket No. 09-109 (filed Jan. 15, 2014).

Pursuant to section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, a copy of this letter is being filed via ECFS. If you have any questions, please do not hesitate to contact me.

Sincerely,

Aaron M. Panner /by EMF

Aaron M. Panner

cc: Julie Veach
Jonathan Sallet
Phillip Verveer
Lisa Gelb
Randy Clarke
Ann Stevens
Sanford Williams
Michelle Sclater
Jamie Susskind
Michele Ellison
Diane Griffin Holland
Jim Bird
Daniel Alvarez
Rebekah Goodheart
Priscilla Delgado Argeris
Nicholas Degani
Amy Bender