

REDACTED—FOR PUBLIC INSPECTION

August 22, 2014

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

ACCEPTED/FILED

AUG 22 2014

Federal Communications Commission
Office of the Secretary

Mr. Sanford Williams
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-C217
Washington, DC 20554

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

Dear Ms. Dortch and Mr. Sanford:

Telcordia Technologies, Inc., d/b/a iconectiv (“Telcordia”), hereby files its reply comments in response to the Wireline Competition Bureau’s Public Notice of June 9, 2014.¹ As discussed with Commission staff, and pursuant to the Revised Protective Order², Telcordia is filing herewith the following four versions of its reply comments:

1. A wholly-unredacted version, which is being filed and placed in the Commission’s Sensitive Compartmentalized Information Facility (“SCIF”). This version contains unredacted information that has been marked as “Restricted Access – Critical Infrastructure Information,” or that has been designated as Highly Confidential or Confidential pursuant to the Revised Protective Order, in addition to publicly available

¹ *Commission Seeks Comment on the North American Numbering Council Recommendation of a Vendor to Serve as Local Number Portability Administrator*, Public Notice, WC Docket No. 09-109, CC Docket No. 95-116, DA 14-794, 29 FCC Rcd. 6013 (Wireline Comp. Bur. rel. June 9, 2014).

² *Petition of Telcordia Technologies, Inc. to Reform or Strike Amendment 70, to Institute Competitive Bidding for Number Portability Administration and to End the NAPM LLC’s Interim Role in Number Portability Administration Contract, Telephone Number Portability*, WC Docket No. 09-109, CC Docket No. 95-116, Revised Protective Order, DA 14-881, (Wireline Comp. Bur. rel. June 25, 2014).

Ms. Marlene H. Dortch
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information. As directed by staff, four copies of this version have been filed for placement in the SCIF.

2. A version from which certain information has been redacted that has been marked as "Restricted Access – Critical Infrastructure Information." This version contains unredacted information that has been designated as Highly Confidential or Confidential pursuant to the Revised Protective Order, in addition to publicly available information. In addition to the copy filed with the Secretary, two copies have been provided to Sanford Williams, pursuant to Paragraph 15 of the Revised Protective Order.
3. A version from which both "Restricted Access – Critical Infrastructure Information" and Highly Confidential Information has been redacted. This version contains unredacted information that has been designated as Confidential pursuant to the Revised Protective Order. In addition to the copy filed with the Secretary, two copies have been provided to Sanford Williams, pursuant to Paragraph 15 of the Revised Protective Order.
4. A publicly available version, which will be filed via ECFS.

Please contact me if you have any questions.

Sincerely,



John T. Nakahata
*Counsel for Telcordia Technologies,
Inc., d/b/a/ iconectiv*

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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Federal Communications Commission
Office of the Secretary

In the Matter of:

Petition of Telcordia Technologies, Inc. To Reform or Strike Amendment 70, To Institute a Competitive Bidding for Number Portability Administration, and To End the LLC's Interim Role in Number Portability Administration Contract Management

WC Docket No. 09-109

Telephone Number Portability

CC Docket No. 95-116

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INTRODUCTION AND SUMMARY

The comments demonstrate that the Commission, guided by the unanimous recommendation of its longstanding, expert, and balanced numbering advisory committee, the North American Numbering Council (“NANC”), should now designate Telcordia Technologies Inc., d/b/a iconectiv, as the Local Number Portability Administrator (“LNPA”) beginning July 1, 2015. As two of the industry’s largest associations with members with substantial stakes both in the smooth operation and cost of local number portability, the United States Telecom Association (“USTA”) and CTIA—The Wireless Association (“CTIA”), point out, “This overwhelming consensus speaks for itself: NANC’s recommendation to the FCC reflected the support of virtually all concerned industry and public stakeholders, including local exchange carriers, interexchange carriers, wireless providers, manufacturers, state regulators, consumer interests, and telecommunications associations.”¹ The NANC’s recommendation “has the overwhelming support of those who will use and rely upon the LNPA and the NPAC/SMS over the life of the next LNPA contract and who undertook to contribute to the remarkably open vendor-selection process.”²

It is also abundantly clear that the members of the NANC, the North American Portability Management LLC (“NAPM”), and their expert working groups—respectively, the Local Number Portability Selection Working Group (“SWG”) and the Future of the Number Portability Administration Center Subcommittee (“FoNPAC”)—concluded that Telcordia could

¹ Comments of CTIA—The Rural Wireless Association and the United States Telecom Association at 16, WC Docket No. 09-109 and CC Docket No. 95-116 (filed July 25, 2014) (“USTA/CTIA Comments”).

² *Id.*

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do the job from a technical and managerial perspective. These groups did not ignore technical merit and quality in favor of price, as Neustar insinuates, but they “undertook a painstakingly diligent and comprehensive review.”³ They expended enormous time and resources, including “technical, engineering, operational and other substantive expertise.”⁴ They conducted “hundreds of meetings and thousands of hours of review, analysis, evaluation and consultation.”⁵ The NANC and NAPM did not take their advisory roles lightly.

Moreover, as USTA and CTIA—representing both wireline and wireless carriers—also point out, “Adoption of the NANC recommendation holds the promise of drastically reducing” LNPA costs borne by the industry and by “the consumers who ultimately pay the hundreds of millions of dollars per year that this service currently costs.”⁶ Over the course of the next contract, including its option years, the NANC and NAPM expert working groups concluded that the difference in cost to industry and consumers ****BEGIN HIGHLY CONFIDENTIAL****

[REDACTED]

[REDACTED]

[REDACTED] ****END HIGHLY CONFIDENTIAL****

Neustar argues that nonetheless the Commission must turn aside NANC’s recommendation and select it as the LNPA because Telcordia is not neutral and thus is not qualified. This is not correct: as USTA and CTIA explain, “Telcordia has demonstrated that it meets the first two prongs” of the Commission’s three-prong neutrality analysis, and it “also took

³ *Id.* at 2.

⁴ *Id.* at 15.

⁵ *Id.* at 15.

⁶ *Id.* at 2.

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numerous steps to ensure that it meets the third ('no influence') prong. . . ."⁷ Neustar argues that affiliates of a telecommunications equipment manufacturer are barred by rule from serving as the LNPA.⁸ That is simply wrong as a matter of law. Neustar then argues that Telcordia cannot be neutral—*i.e.*, that it will be subject to undue influence—because it is owned by Ericsson, which also provides managed services to some carriers and sells wireless network equipment. On this point, the lack of protest from any significant set of stakeholders speaks volumes. The NANC is comprised of large and small incumbent LECs, mobile wireless carriers, cable companies, CLECs, over-the-top VoIP providers, state regulators and state consumer advocates. None of those entities has commented that, notwithstanding NANC's recommendation, they do not believe that Telcordia would be an impartial administrator. Even the one industry commenter that raises neutrality concerns, the self-proclaimed LNPA Alliance, does not provide specifics as to how, in 2014, with a highly specified number portability system, with requirements changed only after an open process conducted by the NANC's LNPA Selection Working Group ("SWG"), and with regular outside neutrality audits of compliance with a code of conduct that bars discrimination, that untoward discrimination would still manifest itself. Discriminatory actions by Telcordia would be suicide—for itself and for Ericsson, which has a brand dependent upon its ability to serve competing entities. The Commission is not obligated by statute or its

⁷ Reply Comments of CTIA—The Wireless Association and the United States Telecom Association at 11, WC Docket No. 09-109 and CC Docket No. 95-116 (filed Aug. 8, 2014) ("USTA/CTIA Reply Comments").

⁸ Comments of Neustar, Inc. at 33-34, WC Docket No. 09-109 and CC Docket No. 95-116 (filed July 25, 2014) ("Neustar Comments"). All citations are to the Highly Confidential version of the Neustar Comments.

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rules to be hostage to such rank, unfounded speculation. In any event, Telcordia will adopt such further safeguards as the Commission deems necessary, as was reflected in its bid documents.

Nor does Telcordia's data center contractor, Sungard Availability Systems ("Sungard AS"), disqualify Telcordia on neutrality grounds from serving as the LNPA. Even if the bar on being an affiliate of a telecommunications carrier or interconnected VoIP provider were applicable to a subcontractor (which it is not), Sungard AS is not a telecommunications carrier or an affiliate of a telecommunications carrier or interconnected VoIP provider. Claims that Sungard AS would subject Telcordia to undue influence are also speculative and, from a practical perspective, impossible. In the first instance, Sungard AS's role is to supply, house, and maintain the servers and underlying database software for the NPAC. Sungard AS neither inputs data into the NPAC, nor takes other telecommunications industry-facing actions. In addition, to the extent that some of Sungard AS's owners—none of which individually controls Sungard AS—have investments in telecommunications carriers or interconnected VoIP providers, Sungard AS could not execute discriminatory conduct in favor of one of those telecommunications carriers/interconnected VoIP providers without violating its fiduciary duties to its other owners. Again, the Commission is not obligated to be hostage to rank, unfounded speculation.

Neustar's other objections are also meritless. The Commission's selection process—which Neustar endorsed as recently as January 2013⁹—does not require a rulemaking to select the next LNPA. Neustar's argument that the Commission is required to proceed by rulemaking

⁹ See Letter from Aaron M. Panner, Counsel for Neustar, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket Nos. 07-149 and 09-109 (filed Jan. 11, 2013) ("Neustar Jan. 11, 2013 Letter").

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because in 1997 it appointed Neustar as an LNPA in an order that also adopted rules is simply wrong. The Commission can adopt rules and make adjudications in the same order, which is what it did in 1997. Neustar's interpretation of the 1997 Order as adopting a rule designating it as the LNPA is not supported by the text of the rules actually adopted nor is it compelled by the text of the order; and it would lead to an inflexible and impractical result. The Commission can reasonably conclude that it is permitted to select the LNPA through an adjudication.

Nor did the Bureau, the NANC or the NAPM run an unfair or flawed procurement process. To the contrary, the process was remarkably open, with public comment at every critical stage—defining the process, formulating the procurement documents (Request for Proposals, Technical Requirements Document and Vendor Qualifications Statement), and making final selection. The decisions taken at each stage were reasonable and considered. Neustar complains now that it did not get the results that it wanted at some points, but it did not suffer any prejudice.

Neustar also incorrectly argues that the NANC recommendation, and its supporting reports, are too sparse to be accorded weight by the Commission, and that were the Commission to do so, it would have impermissibly delegated selection authority to the NANC. Neustar's delegation arguments are a redherring. There has been no delegation of final authority to the NANC; the Commission has always retained final authority as to LNPA selection.

Moreover, the NANC report is not so bare as to make it unreasonable for the Commission to rely on its conclusions and recommendations, as Neustar suggests. In the first instance, as it weighs the competing bids, the Commission reasonably can consider that:

- The NANC is its longstanding and balanced industry advisory committee on numbering issues,

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- The NANC and its subgroups are intimately involved in the administration of number portability,
- The NANC and its subgroups, with Commission oversight, define the local number portability requirements and processes,
- The NANC and NAPM members have expertise in number portability,
- The NANC and NAPM members have a major stake in the reliable operation of the NPAC/SMS,
- The NANC and NAPM industry members compete with one another vigorously, and thus have a substantial interest in impartial local number portability administration,
- The NANC and NAPM members will bear the substantial majority of the direct and indirect costs of the next LNPA, including the costs and risks of transitioning to a new LNPA, and
- The NANC and NAPM members invested significant time and resources in evaluating the competing bids.

Neustar would have the Commission ignore all of this, but the Commission is not compelled to do so. In fact, it would be arbitrary and capricious for the Commission to do so. In any event, the NANC's reports clearly indicate that the NAPM's FoNPAC subcommittee

****BEGIN CONFIDENTIAL**** [REDACTED]

[REDACTED]
[REDACTED] ****END CONFIDENTIAL**** Similarly, the SWG Report ****BEGIN CONFIDENTIAL**** [REDACTED]

[REDACTED] ****END**

CONFIDENTIAL** Moreover, both reports make clear that both the FoNPAC and SWG gave substantial consideration to ****BEGIN CONFIDENTIAL**** [REDACTED]

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[REDACTED]

[REDACTED] ****END**

CONFIDENTIAL** In weighing Neustar's claims—based on studies that compare an LNPA transition to very different and disparate systems conversions—that an LNPA transition will be extremely costly and difficult, the Commission can reasonably consider the conclusions drawn by industry experts with day-to-day experience using the NPAC/SMS. The fact that the transition itself still has details to be worked out is unremarkable given that this is the selection phase, not the implementation phase. These details will necessarily be hammered out cooperatively and collaboratively between the next LNPA and the industry as implementation proceeds; neither Telcordia (which does not get paid until it has its system actually in service) nor the industry has an interest in a failed transition. Moreover, even if the NAPM elects to invoke its right to an extension of the current contract in order to provide a longer period for a transition, ****BEGIN HIGHLY CONFIDENTIAL**** [REDACTED]

[REDACTED]

[REDACTED] ****END HIGHLY CONFIDENTIAL****

Moreover, Neustar's comparisons to problem-plagued information technology transitions such as healthcare.gov or the United/Continental and Verizon/Fairpoint mergers are inapposite. In putting together the RFP, the NANC and NAPM expert working groups included provisions that greatly streamlined the transition. Significantly, there are no changes in systems requirements that accompany this transition. Data would be migrated from one LNPA's database to another's. The database fields are already specified in detail through the work of the NANC and its LNPA Working Group, with those changes documented in publicly available

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documents by Neustar. Furthermore, the RFP specified that the interfaces between the NPAC/SMS and carrier gateways will not change. While there will, of course, be testing, carriers or their service bureaus should not have to change their systems beyond connecting to the new LNPA. Telcordia's bid met these requirements.

Neustar also argues that the Commission cannot now move to selection because the procurement documents failed to include critical factors in sufficient detail, including law enforcement access and the IP Transition. In the first instance, Neustar waived these objections long ago, when it endorsed the RFP. As the incumbent LNPA in the best position to know what technical issues should be considered, it was particularly important for Neustar to raise any deficiencies in the procurement documents. To allow Neustar to do so now as a "get out of jail free" card for its failed bidding strategy would reward Neustar for not coming forward during the comment period on the RFP. There is no reason for the Commission to do that.

In any event, the RFP appropriately dealt with both law enforcement access and the IP transition. Whomever the LNPA is will have to provide law enforcement support, which is what Section 11.2 set forth with 21 separate requirements. Among other things, the RFP requires that law enforcement be provided access through authenticated, secure and encrypted means. Similarly, it was not—and still is not—possible for the RFP to specify how the NPAC should function in an all-IP environment because the industry has not yet reached a consensus as to how IP routing should be structured. The RFP reasonably addressed this issue, and thus the selection process has as well.

Finally, in a last-ditch effort to retain its contract, Neustar asks the Commission to discard the results of the current bidding and allow it to submit a new bid under the theory that "[t]he

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selection of an LNPA implicates serious national-security issues that were not addressed in the RFP process” and that the Commission should allow “candidates to compete on the relative security of their proposed systems.”¹⁰ As with Neustar’s other objections to the RFP, it long ago waived these provisions by raising none of them when the Bureau solicited comment on the RFP. Neustar is not entitled to re-competition. Similarly, the RFP did not overlook any security-related legal requirements. Thus, the RFP was not legally deficient.

Substantively, in response to the RFP, Telcordia proposed robust security protections, consistent with its extensive experience in the U.S. operating sensitive and critical systems, as well as its experience operating in other countries. Telcordia has long been at the center of telecommunications routing, dating back to the days of the integrated Bell System. Telcordia operates the Local Exchange Routing Guide (“LERG”) and Business Integrated Routing and Rating Database System (“BIRRD”) and provide telecommunications infrastructure support through the Common Language database, all of which must be protected against cyberattacks and for which business continuity needs to be maintained. Moreover, to extent the concern is some kind of vulnerability because of Ericsson’s ownership, Ericsson Inc. itself is represented on the National Security Telecommunications Advisory Committee. Moreover, ****BEGIN**

CRITICAL INFRASTRUCTURE **BEGIN HIGHLY CONFIDENTIAL**** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ****END HIGHLY CONFIDENTIAL** **END CRITICAL INFRASTRUCTURE****

¹⁰ Neustar Comments at 102.

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Moreover, it bears emphasis that many of Neustar's newly invented security concerns—which it has touted to the press—are meritless. Specifically:

- Telcordia cannot, under the RFP, integrate the NPAC/SMS with Ericsson's BSS/OSS products. Were Ericsson's BSS/OSS products to interact with the NPAC/SMS, they would have to do so in the same manner as any other user. This could not create a "back door" to invade the NPAC/SMS.
- Telcordia is not re-using foreign code. Telcordia is creating entirely new code for the U.S. Number Portability Administration Center/Service Management System ("NPAC/SMS") that underlies the LNPA operation. Telcordia is not contracting for its NPAC/SMS code development from non-U.S. sources.
- As required by the RFP, all NPAC/SMS user data will be stored in the U.S.
- Telcordia has never planned on retaining Enhanced Platform for Law Enforcement Agencies and Public Safety Answering Point Providers ("Enhanced Law Enforcement Platform" or "ELEP") queries. Telecommunications providers are required to keep records of requests for law enforcement access, but Telcordia is not required to keep records of the queries performed by law enforcement through the ELEP. Telcordia also has no reason to and will not monitor those queries.
- The RFP did not ignore ELEP, and includes security related requirements for the ELEP. As the RFP also reflects, ELEP requires a separate agreement between the NPAC/SMS operator and law enforcement. Further security issues related to ELEP can and should be addressed in the contracting process. ELEP can also be fully tested as part of the overall transition testing process.

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Telcordia has a strong commitment to building and operating a safe, secure and reliable NPAC/SMS. Any remaining security concerns, to the extent that they are shared by Executive Branch agencies, can and should be addressed through post-selection mitigation discussions with those agencies, with selection conditioned upon providing adequate assurances. Proceeding in this manner would allow the Commission to ensure that national security concerns are fully safeguarded, while allowing the construction and testing of the new NPAC/SMS to proceed.

Accordingly, Neustar has raised no sufficient reason for the Commission, in exercising its independent review and judgment, to reject NANC's recommendation to select Telcordia as the next LNPA. The Commission should promptly designate Telcordia as the next LNPA so that Telcordia and the industry can move forward quickly with necessary contract negotiation, implementation, and testing.

ARGUMENT

I. TELCORDIA HAS SATISFIED THE COMMISSION'S NEUTRALITY REQUIREMENTS AS IMPLEMENTED IN THE RFP.

A. The Legal Standard.

The Telecommunications Act of 1996 ("the Act"), as implemented by the Commission, requires the administrator of Local Number Portability to be neutral. The Act directs the Commission to "create or designate one or more impartial entities" to administer numbering.¹¹ The Commission has interpreted this directive to require that the LNPA should be "an independent, non-governmental entity, not aligned with any particular telecommunications industry segment, whose duties are determined by the NANC."¹²

¹¹ 47 U.S.C. § 251(e)(1).

¹² 47 C.F.R. § 52.21(k).

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In applying this neutrality standard, the NAPM, the NANC, and the Commission look to the neutrality requirements applicable to the North American Numbering Plan Administrator (“NANPA”), codified at 47 C.F.R. § 52.12(a), which have previously been construed by the Commission. Indeed, the bid documents both specifically incorporate and summarize the three core neutrality requirements of Section 52.12(a).¹³

Section 52.12(a) enumerates three criteria that the Commission considers to evaluate whether a particular entity is neutral. *First*, the LNPA may not be a telecommunications services provider or an affiliate of such a provider.¹⁴ *Second*, the LNPA and any affiliates “may not issue a majority of its debt to, nor may it derive a majority of its revenues from, any telecommunications service provider.”¹⁵ *Third*, the LNPA must not be “subject to undue influence by parties with a vested interest in the outcome of numbering administration and activities.”¹⁶

The Commission has made clear that while the first two criteria must be considered, the touchstone of the neutrality analysis is the third criterion. Indeed, the Commission has stated that, even if a potential NANPA “does not satisfy the neutrality criteria stated in sections 52.12(a)(1) and (2), the Commission nonetheless may find that the NANPA is neutral and not subject to undue influence by parties with a vested interest in the outcome of numbering

¹³ NAPM, LLC 2015 LNPA VQS § 3.4 (“VQS”), available at https://www.napmllc.org/Docs/npac/ref_docs/2015%20LNPA%20Vendor%20Qualification%202%204%2013.docx (last accessed Aug. 7, 2014).

¹⁴ 47 C.F.R. § 52.12(a)(1)(i); VQS § 3.4(1).

¹⁵ 47 C.F.R. § 52.12(a)(1)(ii); VQS § 3.4(2).

¹⁶ 47 C.F.R. § 52.12(a)(1)(iii); VQS § 3.4(3).

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administration and activit[i]es.”¹⁷ Specifically, even an entity that does not fully meet one of the first two criteria can nevertheless qualify as “neutral” so long as the Commission finds that the violation is *de minimis* and the entity satisfies the undue-influence criterion.¹⁸ As a result, the Commission has emphasized that the third criterion “affords us broad discretion to determine whether the entity is subject to undue influence by parties with a vested interest in the outcome of numbering administration.”¹⁹

B. Telcordia Is Itself Neutral.

The Commission has repeatedly held that the neutrality requirements explained above apply to the entity that will administer numbering—not to its parent or affiliates.²⁰ Contrary to this principle, Neustar’s opening comments uniformly refer to Telcordia by the name of its parent company—Ericsson—in an apparent effort to create confusion over which entity will serve as LNPA and which entity is subject to the neutrality analysis.²¹ Neustar spends much of

¹⁷ *Administration of the North American Numbering Plan; Toll Free Service Access Codes*, Third Report and Order and Third Report and Order, FCC 97-372, 12 FCC Rcd. 23,040, 23,081 ¶ 81 (1997) (“*NANP Administration Third Report and Order*”).

¹⁸ *Id.* at 23,080-81 ¶¶ 78-81; *see also Request of Lockheed Martin Corporation and Warburg, Pincus & Co. for Review of the Transfer of the Lockheed Martin Communications Industry Services Business*, Order, FCC 99-346, 14 FCC Rcd. 19,792, 19,795 ¶ 4 (1999) (“*Warburg, Pincus Transfer Order*”) (noting that Lockheed Martin was an affiliate of a telecommunications services provider but concluding that Lockheed was nevertheless neutral because its financial stake in that provider was “small relative to Lockheed’s overall assets” and because it had met the undue-influence criterion).

¹⁹ *Warburg, Pincus Transfer Order*, 14 FCC Rcd. at 19,808 ¶ 24.

²⁰ *See, e.g., id.*, 14 FCC Rcd. at 19,806 ¶ 21 (“In this instance, however, it is NeuStar, not Warburg, that is subject to compliance with our neutrality requirements.”); *id.* at 19,810 ¶ 30.

²¹ *See, e.g., Neustar Comments* at 20 (“Were Ericsson to be named as LNPA, carriers that lack a managed services relationship with Ericsson would justifiably suspect that favored competitors were gaining an advantage”) Of course, it is *Telcordia* that has been

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its brief arguing that “Ericsson cannot satisfy the requirements, set forth in the Commission’s rules, that the LNPA be a ‘neutral third part[y]’”²² But, while Telcordia believes that Ericsson is neutral for the reasons stated in the opinion letter,²³ that is not, as a matter of law, the relevant question. It is Telcordia—not Ericsson—that has been recommended to be the next LNPA, and it is Telcordia that is subject to the Commission’s neutrality analysis.

On the issue of *Telcordia*’s neutrality, Neustar has very little to say.²⁴ Neustar does not—and cannot—dispute that Telcordia meets the first two prongs of the neutrality analysis. As explained in the opinion letter²⁵ that Telcordia submitted with its bid, Telcordia is not a Telecommunications Services Provider (“TSP”) or an Interconnected VoIP Provider (“IVP”) and has none of the corporate or contractual relationships with a TSP or an IVP that are covered by the first two prongs of the neutrality analysis. Nor does Neustar argue that Telcordia is directly subject to undue influence by a TSP or an IVP.

Rather, Neustar argues *first*, that Telcordia cannot be the LNPA because Ericsson is a telecommunications equipment manufacturer—a prohibition found nowhere in the Commission’s rules. *Second*, Neustar argues that Telcordia cannot be the LNPA under the undue-influence prong of the Commission’s neutrality criteria because, it says, Ericsson is

recommended to be the next LNPA, while it is *Ericsson* that has certain Managed Services Agreements.

²² *Id.* at 21.

²³ Telcordia Bid, Vendor Qualification Section (“VQS”), Attachment to Question 3.5 at 10-13 (Telcordia06083-Telcordia06086).

²⁴ See Neustar Comments at 23, 33-34.

²⁵ Telcordia Bid, VQS, Attachment to Question 3.5 at 1-17 (Telcordia06074-Telcordia06090).

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subject to undue influence by entities with whom one of its subsidiaries²⁶ has entered Managed Services Agreements (“MSAs”), some of which are telecommunications providers. Neustar does not suggest that Telcordia is subject to undue influence from these entities directly but rather that Ericsson is subject to such influence and will in turn unduly influence Telcordia.

These arguments defy reality. Telcordia already provides products and services that require absolute neutrality. For example, it provides routing information relied upon by nearly every Public Switched Telephone Network-connected telecommunications provider—whether wireline, wireless or VoIP—through the LERG Routing Guide and the BIRRDs and provides telecommunications infrastructure support through the Common Language database. If its relationship with Ericsson prevented Telcordia from acting neutrally, this would already have manifested itself in the way Telcordia provides these other products and services. Indeed, if Ericsson were bent on using Telcordia to favor some carriers over others and were able to influence Telcordia to do so, as Neustar suggests, routing guides such as the LERG would be a much more potent tool in that they could affect *all* carriers’ routing of traffic to a carrier, rather than just the routing of traffic for incremental ported customers. And yet there is no question that Telcordia administers the LERG—and each of its other products—neutrally. Just as it has done with its other products and services, Telcordia will administer the NPAC neutrally.

²⁶ Telcordia Technologies, Inc., is an indirect wholly owned subsidiary of Ericsson Holding II Inc., which is a wholly owned subsidiary of Telefonaktiebolaget LM Ericsson. Ericsson Holding II is also the parent company of Ericsson Inc. It is Ericsson Inc. that has entered into the MSAs at issue here. References to “Ericsson” in this document are generally to LM Ericsson unless otherwise noted.

1. There Is No Rule Barring Affiliation with a Manufacturer of Telecommunications Equipment.

Neustar first argues that the Commission has adopted a categorical bar prohibiting the LNPA from being the affiliate of any manufacturer of telecommunications equipment. But there is no such rule.²⁷ The LNPA's lone neutrality requirement appears in the Code of Federal Regulations at 47 C.F.R. § 52.21(k), which requires only that the LNPA be "an independent, non-governmental entity, not aligned with any particular telecommunications industry segment, whose duties are determined by the NANC."²⁸

The language quoted by Neustar appears *not* in the Code but in Section 4.2.2 of the Selection Working Group's April 25, 1997 report to the NANC ("1997 SWG Report"). Neustar claims that this language was incorporated into the Commission's rules by 47 C.F.R. § 52.26(a), which requires local number portability administration to "comply with the *recommendations*" of the 1997 SWG Report.²⁹ But the language quoted by Neustar does not appear in any of the recommendations of the report. Indeed, the 1997 SWG Report recommended that the NANC adopt the LNPA selection criteria set forth in Section 4.1.1.³⁰ And the Commission, in the *Second Report and Order*, specifically quoted Section 4.1.1 as the criteria the "NANC concluded

²⁷ See Letter from John T. Nakahata *et al.*, Counsel to Telcordia, to Marlene Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket Nos. 07-149 and 09-109 (filed May 9, 2014).

²⁸ 47 C.F.R. § 52.21(k).

²⁹ 47 C.F.R. § 52.26(a) (emphasis added).

³⁰ North American Numbering Council, LNPA Selection Working Group, Report § 4.1.1 (Apr. 25, 1997), *available at* [https://www.npac.com/content/download/10717/104218/NANC%20LNPA%20Selection%20Working%20Group%204-25-97%20DOC-272978A1%20\(2\).doc](https://www.npac.com/content/download/10717/104218/NANC%20LNPA%20Selection%20Working%20Group%204-25-97%20DOC-272978A1%20(2).doc) (last accessed Aug. 7, 2014) ("1997 SWG Report").

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should govern the selection of a local number portability database administrator.”³¹ Nothing in Section 4.1.1 recommends banning affiliates of a telecommunications equipment manufacturer. Section 4.2.2, by contrast, was not recognized or discussed by the Commission as a NANC recommendation or as NANC-recommended criterion in 1997 and has not been added to any legislative rule since then. Rather, Section 4.2.2 by its terms is part of a historical recitation of the terms that had been included in the RFP issued by the Mid-Atlantic Region limited liability company, the mid-Atlantic area’s predecessor to NAPM.³² While the NANC concluded that the criteria used by the regional LLCs “met basic criteria for neutrality,” it never stated or recommended that those particular specifications constituted the minimum requirements for neutrality.³³ Thus, Section 4.2.2 does not establish mandatory neutrality criteria that would then be incorporated by reference into 47 C.F.R. § 52.26(a).

³¹ *Telephone Number Portability*, Second Report and Order, FCC 97-289, 12 FCC Rcd. 12,281, 12,301 ¶ 29 (1997) (“*Second Report and Order*”). Section 4.1.1 of the 1997 SWG Report stated:

The Telecommunications Act of 1996 and the FCC’s July 2, 1996 LNP Order established mandatory criteria (Criteria, individually Criterion) for the selection of the LNPA and all related activities. Central among these Criteria are competitive neutrality, which is a requirement for the third party LNPA itself (LNP Order, ¶93), the LNPA’s administrative activities (LNP Order, ¶92), and the manner by which LNPA costs are borne by telecommunications carriers (1996 Act, §251(e)(2)). Additional significant Criteria that apply to the LNPA selection process include: (1) equal and open access to LNP databases and numbers (1996 Act, §251(e)(1) and LNP Order, ¶98)); (2) uniformity in the provision of LNP data (LNP Order, ¶91); (3) cost effective implementation of LNP (LNP Order, ¶¶91, 93, 95); (4) consistency in LNPA administration (LNP Order, ¶93); (5) LNPA compliance with NANC-determined technical and functional proficiency standards (LNPA Order, ¶¶95, 99); and (6) regionalized LNPA deployment within the FCC deployment schedule (LNP Order, ¶91 and Appendix F).

³² See 1997 SWG Report § 4.2.2.

³³ *Id.* § 6.2.3.

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The NANC/NAPM LLC Consensus Proposal further confirms that the particular language quoted by Neustar was never codified in a rule. In that proposal—which was supported by Neustar³⁴ and adopted by the Commission—the NANC and NAPM summarized the neutrality requirement that the Commission has imposed: “‘competitive neutrality,’ meaning that 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.”³⁵ The Consensus Proposal referred to the criteria recited in Paragraph 29 of the *Second Report and Order* and Section 4.1.1 of the 1997 SWG Report and did not suggest that the historical recitation from Section 4.2.2 had ever been incorporated into the Commission’s rules. If Neustar believed otherwise it should have objected to the proposal when it had the opportunity.

Moreover, it bears emphasis that the Bureau approved the procurement documents prepared by the NANC and NAPM without including the neutrality language quoted by Neustar in the solicitation documents, even after Neustar pointed out the historical use of such a preclusion in the 1997 RFPs. In August 2012, the Commission released the proposed Request

³⁴ See Letter from Aaron M. Panner, Counsel for Neustar, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket Nos. 07-149 and 09-109 (filed Mar. 9, 2012) (“In addition, we briefly discussed the LNPA RFP process. We stated that Neustar supports the consensus process and would like to see it go forward without delay.”); see also Reply Comments of Neustar, Inc. at 2 & n.6, WC Docket No. 09-109 and CC Docket No. 95-116 (filed Mar. 29, 2011) (stating that Neustar “intends to participate in the LNPA selection process set out in the Consensus Proposal” and that “Neustar agrees with the Bureau that the Consensus Proposal is ‘consistent with prior delegations of authority and Commission rules regarding the LNPA selection.’” (citation omitted)).

³⁵ *Petition of Telcordia Technologies Inc. to Reform Or Strike Amendment 70, to Institute Competitive Bidding for Number Portability Administration and to End the NAPM LLC’s Interim Role in Number Portability Administration Contract; Telephone Number Portability, Order and Request for Comment*, DA 11-454, 26 FCC Rcd. 3685, 3695, Attach. A (2011).