[redacted] ****END CONFIDENTIAL****. The Report outlines in detail ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL**** Taken as a whole, the record confirms the reasonableness of NAPM's actions.

Telcordia ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL**** In response, NAPM conducted a careful investigation. NAPM's investigation confirmed that ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL****). Thus, all the information was on the IASTA system.[198]

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[196] *See* Report of the North American Portability Management LLC in Response to the Wireline Competition Bureau Letter, dated February 11, 2014, at 26 (Mar. 20, 2014) ("NAPM Process Report") (attached to NANC Apr. 24 *Ex Parte* Letter).

[197] *See* NAPM Process Report at 27.

[198] Neustar fails to explain to the Commission that there is a critical exception to the FAR "late-is-late" rule: A proposal will not be rejected as late if "it was received at the Government installation designated for receipt of proposals and was under the Government's control prior to the time set for receipt of proposals. . . ." FAR 15.208(b)(1)(ii). Because, as NAPM's investigation found, ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL****

After conducting its investigation, the NAPM also ****BEGIN CONFIDENTIAL****

[redacted] ****END CONFIDENTIAL**** NAPM updated the public section of the website pertaining to the RFP with a message to all bidders that the period to submit survey responses had been extended. NAPM also reached out individually to both Neustar and Telcordia to inform them of the extension and corresponding resubmission process.

This record confirms that NAPM responded reasonably to Telcordia's inquiry, conducted a thorough investigation prior to making any decision, and ultimately decided to extend—with the FCC's consent—the due date for proposals. Each of these actions was within the NAPM's discretion in conducting the competition to ensure equal treatment and rectify an otherwise potentially ambiguous RFP provision. On this record, there is no basis to question the NAPM's decision.

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[199] *See* NAPM LNPA Vendor Selection Process Report at 88 (Attachment 3).

b. The Decision Caused No Prejudice to Neustar.

Moreover, Neustar fails to identify any possible prejudice flowing from the decision to extend the deadline for proposal submission. Both offerors were treated the same, and given the same extension. Neither offeror's initial submission ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL**** Accordingly, there is no basis to conclude that Neustar was in any way prejudiced by the NAPM's decision to extend the due date for proposals to all offerors.

As the report correctly notes, ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL**** As such, both Neustar and Telcordia were equally able to submit revised proposals by the revised due date.

Moreover, the report confirms—contrary to Neustar's prior allegations—that the FoNPAC ****BEGIN CONFIDENTIAL**** [redacted]

[redacted] **END CONFIDENTIAL**[202]

NAPM further responded to similar concerns regarding the review of proposals on May 15, 2013, when **BEGIN CONFIDENTIAL** [redacted]

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[200] *See* NAPM Process Report at 26.

[201] The Report timeline confirms that **BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL** *See id.*, at 32.

[202] NAPM LNPA Vendor Selection Process Report at 34.

[203] *See id.* at 35.

[redacted] ****END CONFIDENTIAL**** Neustar thus could not have suffered any competitive prejudice from the extension. Nor does it try to argue otherwise.

Neustar nonetheless insists that NAPM and FoNPAC should have rejected Telcordia's proposal, leaving Neustar in the catbird seat as the sole offeror. Of course it does. But ***that outcome*** would have been unreasonable and unfair. As the investigation found, ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL**** And it would have robbed the Commission, the carriers, and consumers of the benefit of robust competition, leaving them locked in Neustar's usurious sole-source embrace. Such an outcome would have been indefensible.

2. The Decision Not to Solicit Second BAFOs Was Reasonable and Caused No Prejudice to Neustar.

****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL**** Neustar tried to derail the LNPA selection process by submitting an unsolicited second BAFO, and browbeating the FoNPAC to accept it. ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL****

Neustar musters just two complaints about the decision. First, Neustar asserts that ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL**** But there was nothing improper about using the FAR for guidance (rather than as a binding requirement), as part of a determination as to the reasonable course of conduct. Second, Neustar asserts that the RFP and the FAR created an expectation that a second round of BAFOs would occur. But even a cursory review of the RFP and the FAR shows that Neustar is incorrect.

a. The Decision Not to Obtain Second BAFOs Was Reasonable.

The NAPM Vendor Selection Process Report confirms that ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL**** when determining how to respond to Neustar's unsolicited second BAFO.[204] Based on the collective analysis derived from this process, the NANC chairman ultimately concluded ****BEGIN CONFIDENTIAL**** [redacted]

[204] *See id.* at 5-6.

[205] *Id.*

[redacted] **END CONFIDENTIAL** There was nothing irrational about consulting such principles as a touchstone for reasonableness and as an additional point **BEGIN CONFIDENTIAL** [redacted]

[206] *See id.* at Attachment 4 (e-mail from **BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL** at 95-96 of PDF file).

[207] *Id.* at 94-95.

[redacted] ****END CONFIDENTIAL****

In sum, ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL**** and concluded that a second BAFO was unnecessary and that rejection of Neustar's unsolicited bid was the best course of action to ensure that the selection process remained fair and impartial. That decision was reasonable, and there is no basis to question it.

b. Neustar Had No Right to a Second BAFO.

Both the express language of the RFP and the announced timeline for the LNPA RFP put all offerors on notice that the award might be made on the basis of initial proposals without any BAFOs at all. The RFP informed offerors that

> selection of the LNPA will be made ***without the requirement of discussions*** or interviews, but discussions and interviews may be held if desired by the FoNPAC. ***All Respondents are encouraged to submit their best proposal***; each Respondent's proposal in response to this RFP survey should contain the Respondent's best terms from a technical, management, and cost standpoint, as outlined in Section 14.1.1.[209]

This language advised all offerors to submit their best proposal out of the gate, because the FoNPAC might not open discussions and request even a single BAFO. Thus, the RFP language on which Neustar relies—RFP § 13.6—confirms that all offerors knew that there might be ***no*** opportunity for proposal revisions, and the decision on whether to request BAFOs rested in the

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[208] *Id.*

[209] RFP § 14.1 (emphasis added).

sole discretion of the FoNPAC.[210] Neustar thus had no reasonable expectation of even one BAFO, let alone two.[211]

Further, the very name of the process—Best and ***Final*** Offers—advised Neustar that it should not expect a second chance. And on top of that, the RFP's announced timelines for award put all offerors on notice that the FoNPAC might not request ***any*** BAFOs. The RFP called for submission of proposals in April 2013 and contemplated selection of an awardee by August 5, 2013.[212] Under this schedule, it would be difficult to obtain and evaluate even a single BAFO, and impossible to conduct multiple BAFOs. (Indeed, in its discussions of the possibility of a BAFO with the FoNPAC in August 2013, Neustar observed that "[i]t may be getting late" for even one BAFO.[213]) Even after extending the timeline and soliciting BAFOs, the FoNPAC's announced timeline put all offerors on notice that another round of BAFOs was unlikely, as did the statements of counsel for the NAPM, who told Neustar that the NAPM intended to "come back out with *a* BAFO."[214] BAFOs were submitted on September 18, 2013. Meanwhile, the FoNPAC informed offerors that it anticipated recommending an awardee by November 14, 2013.

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[210] *See also* LNPA Procurement Presentation and Q & A in Denver, Colorado, Neustar, Inc. Transcript at 100:2-3 (Aug. 7, 2013) ("Neustar Transcript").

[211] Neustar also relies on the RFP's statement that "competition will be used to determine price reasonableness." Neustar Comments at 72 (citing RFP § 13.4). But that RFP language was satisfied when the two offerors submitted their initial proposals, allowing the FoNPAC to compare the prices of those proposals to determine reasonableness. Nothing in the RFP language states or suggests that the FoNPAC will engage in multiple BAFOs.

[212] RFP § 16.1.

[213] Neustar Transcript at 186:17; *see also id.* at 203:6-11 (noting that any BAFO would request that Neustar "come back with your best offer").

[214] *Id.* at 203:6-11 (Aug. 7, 2013) (emphasis added).

Given this timeline, it would be patently unreasonable for any offeror to expect an ***additional*** round of BAFOs.[215]

The FAR and sound procurement practices also refute Neustar's claim that it was entitled to a second BAFO. Like the RFP here, the standard FAR clause instructing offerors in competitive procurements advises them that the agency intends to make award without discussions or proposal revisions.[216] Like the RFP here, that clause therefore informs offerors that "the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint."[217] Although the procuring agency retains the discretion to conduct discussions, an offeror has no basis to expect that it will have the chance to revise its proposal. Moreover, where an agency does conduct discussions and obtain proposal revisions, the same principle holds true—the decision to conduct a single round of discussions does not create any reasonable expectation that a second round will occur. There simply is no FAR requirement for multiple rounds of BAFOs, and Neustar fails to point to any such requirement. In short, the FAR—like the RFP—gives the agency the discretion to decide whether to have one BAFO, let alone multiple BAFOs. The FoNPAC and NANC rationally exercised that discretion here. Nothing entitled Neustar to another bite at the apple.

Finally, Neustar's own prior statements show that it did not expect multiple rounds of BAFOs, and in fact believed such a course would be inappropriate and unnecessary. Neustar's November 6, 2012 *Ex Parte* filing flatly rejected the need to mandate the solicitation of multiple

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[215] ****BEGIN CONFIDENTIAL****
[redacted] ****END CONFIDENTIAL****

[216] *See* FAR 52.215-1(f)(4).

[217] *See id.*

best-and-final offers, stating that "as Neustar has explained previously, in a confidential RFP process, there is no reason to mandate the solicitation of multiple best-and-final offers."[218] Similarly, in its presentation to the FoNPAC in August 2013, Neustar acknowledged that a BAFO was merely something that the "RFP put . . . forward as an option" and that the opportunity to submit additional offers was available only if there were a "request from the FoNPAC."[219] For all of these reasons, Neustar's claim that it expected a second round of BAFOs falls flat.

c. Neustar's Actions Strongly Suggest that It Had Access to Inside Information.

Although the efforts by the FoNPAC, SWG Tri-Chairs, and NANC Chairman are beyond reproach, the same cannot be said of Neustar's conduct in the timeframe between its ****BEGIN CONFIDENTIAL****

[218] Letter from Aaron Panner, Counsel, Neustar, to Marlene Dortch, Secretary, FCC, at 5 n.11, WC Docket Nos. 07-149 & 09-109, CC Docket No. 95-116 (filed Nov. 6, 2012).

[219] LNPA Procurement Presentation and Q & A in Denver, Colorado, Neustar, Inc.,Transcript 185-186 (Aug. 7, 2013).

[220] *See* NAPM Process Report at 46.

[221] *Id.* at 60-61.

[redacted]

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As illustrated above, the timing of Neustar's second BAFO submission, and ensuing campaign, is highly suspect. ****BEGIN CONFIDENTIAL**** [redacted]

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[222] *See id.* at 46. Interestingly, the NAPM LNPA Vendor Selection Process Report notes that certain FoNPAC members were in favor of a second BAFO prior to selecting Telcordia.

[223] *Id.* at 6.

[redacted] **END

CONFIDENTIAL** the record strongly suggests that Neustar was working with inside

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[224] *Id.*

[225] *See* NAPM LNPA Vendor Selection Process Report at 51-52 (discussing Aaron Panner's November 4, 2013 submission).

[226] *Id.* at 61.

[227] *Id.* at 3.

information from an as-yet unidentified source. Neustar's aggressive conduct is no mere coincidence, and it militates against any second round of BAFOs.

Throughout its comments, Neustar chastises the Commission for supposedly not following sound federal procurement practices. But let there be no doubt: Had this been a federal procurement—or had the Commission applied federal procurement statutes or regulations—Neustar could and should have been disqualified from the competition altogether. First, Neustar's receipt of non-public information regarding the LNPA procurement would constitute a blatant violation of the Procurement Integrity Act ("PIA").[228] The PIA expressly prohibits an offeror from knowingly obtaining contractor bid or proposal information or source selection information before the award of a Federal agency procurement to which the information relates.[229] This prohibition applies to any person, such as contractor personnel, and Neustar's apparent receipt of information regarding the FoNPAC's recommendation of Telcordia before any public announcement had been made would constitute a clear violation of that statute.

Moreover, had this been a FAR-covered procurement, Neustar's unsolicited BAFO would run afoul of the instructions to offerors under FAR 52.215-1(c)(7). That provision states that "offerors may submit revised proposals ***only if requested or allowed by the Contracting Officer.***"[230] In stark contrast to this requirement, Neustar did not wait for a request from FoNPAC or other authorization before submitting its second BAFO. ****BEGIN CONFIDENTIAL****

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[228] *See* 41 U.S.C. §§ 2101-2107.

[229] 41 U.S.C. § 2102(b).

[230] FAR 52.215-1(c)(7) (emphasis added).

[redacted] ****END CONFIDENTIAL**** Had the Commission been applying FAR principles, it could have rejected the submission outright and immediately upon receipt under this clause.

As this discussion shows, the decision not to entertain a second round of BAFOs was unassailably reasonable. Any other decision would have cast irreparable doubt on the fairness and integrity of the LNPA selection process.

C. The Selection Reports Appropriately Explain the Justification for the NANC's Recommendation.

Aside from its criticisms of the process, Neustar also raises a litany of supposed shortcomings with the NANC and the FoNPAC selection reports. It criticizes the length of the reports and claims that the reports did not adequately address relevant factors. These objections are meritless. As explained below, the NANC Report and its attachments sufficiently explain the reasons for the NANC's conclusions.

1. The Recommendation Properly Addresses Pricing.

At several points in its comments, Neustar argues that the recommendation ignores technical and management criteria in favor of price.[231] This argument, yet again, mischaracterizes the recommendation and ignores its actual scores and findings. ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL****

[231] *See, e.g.*, Neustar Comments at 82-84.

[232] SWG Selection Report at 2.

After "a painstakingly diligent and comprehensive review,"[233] it was clear that ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL** **BEGIN HIGHLY CONFIDENTIAL**** [redacted] ****END HIGHLY CONFIDENTIAL****

Moreover, ****BEGIN HIGHLY CONFIDENTIAL**** [redacted] ****END HIGHLY CONFIDENTIAL**** As USTA and CTIA, whose members include a wide and diverse sector of the industry, point out in their comments, "[T]he users of the NPAC/SMS LNP database have experienced rapidly escalating assessments of the last decade; indeed costs have more than doubled since 2005.[237] [O]ur members—and ultimately all voice customers—are the ones paying this sizeable bill."[238] USTA and CTIA further state that "[t]he industry overwhelmingly hopes

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[233] USTA/CTIA Comments at 2.

[234] FoNPAC Selection Report at 3.

[235] *Id.*

[236] *Id.*

[237] USTA/CTIA Comments at 19.

[238] *Id.*

that a new LNPA . . . will drastically reduce these escalating costs."[239] This is attention to cost is consistent with the Commission's precedent, which recognizes that "Costs are important, particularly to the carriers that will bear larger shares of the costs for numbering administration."[240] Thus, in the context of selecting the NANPA, the Commission has held that the NANC properly considered a price differential of $22 million to be "an important factor" in its selection recommendation.[241] ****BEGIN HIGHLY CONFIDENTIAL**** [redacted]

****END HIGHLY CONFIDENTIAL****

Ignoring this Commission's precedent, Neustar cites cases decided under the FAR,[242] which it concedes do not apply here. But even if these cases applied, they do not support Neustar's argument. For example, in *PharmChem Labs, Inc.*, the decision notes that the vendors, ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL****, were far from technically equal.[243] The selected vendor in *PharmChem Labs*, had a significantly lowered technical score, accompanied by a much lower-priced offer.[244]

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[239] *Id.*

[240] *Warburg, Pincus Transfer Order*, 12 FCC Rcd. at 23,074-75 ¶ 65.

[241] *Id.*

[242] Neustar Comments at 85 n. 270.

[243] *PharmChem Labs., Inc.*, B-244385, 1991 WL 216281 at 3 (Comp. Gen. Oct. 8, 1991).

[244] *Id.*

Neustar also faults the recommendation for "ignoring Neustar's best BAFO pricing proposal," supposedly "exaggerating" the difference in price between its bid and Telcordia's bid and its bid.[245] But the NAPM and the NANC appropriately ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL** **BEGIN HIGHLY CONFIDENTIAL**** [redacted]

[245] Neustar Comments at 86-87.

[246] RFP § 13.4.

[247] *Id.*

[248] Neustar Bid, BAFO § 2.1 at 2 (Document No. 23 of Neustar production); *id.*, Price Factors § 3.1 at 3.0-10 (Document No. 5 of Neustar production) ****BEGIN HIGHLY CONFIDENTIAL**** [redacted] ****END HIGHLY CONFIDENTIAL****

[249] *Id.*, BAFO § 2.2 at 2 (Document No. 24 of Neustar production).

[redacted]

****END HIGHLY CONFIDENTIAL**** during its meeting with the FoNPAC, counsel for NAPM asked Neustar to explain how its bid was compliant with "the RFP's flat-rate pricing requirement"[250] and asked Neustar, in response to a BAFO, whether it would consider submitting a price proposal "that's like a single element flat rate."[251]

In any case, ****BEGIN HIGHLY CONFIDENTIAL**** [redacted] ****END HIGHLY CONFIDENTIAL****

2. The Recommendation Appropriately Considered Transition Costs.

Neustar also argues that the Recommendation did not fairly consider transition costs. But the Recommendation explicitly notes that ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL**** and both the NANC and the FoNPAC reasonably concluded that ****BEGIN HIGHLY CONFIDENTIAL**** [redacted]

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[250] Neustar Transcript at 110:10-11 (Aug. 7, 2013).

[251] *Id.* at 112:4.

[redacted]

****END HIGHLY CONFIDENTIAL** **BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL****

Yet despite this reasonable assessment, Neustar now asks the Commission to second-guess the industry—apparently under the theory that transition costs must be higher than the ****BEGIN HIGHLY CONFIDENTIAL**** [redacted] ****END HIGHLY CONFIDENTIAL****NeuStar's request that the Commission ignore the industry is ironic since Neustar's own bid acknowledged that "[t]he Industry understands better than anyone else that there is a lot at stake when contemplating a transition to another vendor for LNP administration."[253] It is also unrealistic. The RFP required respondents to meet and maintain the existing interfaces and business rules. For example, even after a vendor change, the interfaces between the NPAC and the gateway products on the carrier end will not change and the NPAC must support those interfaces.[254] Any issues in supporting the interfaces will be the LNPA's responsibility to correct—not the carriers' or the gateway vendors.[255] The business rules for porting have to comply with the RFP requirements and these must be met by the LNPA.[256] Those business rules include the FCC mandated porting times. The RFP also requires that the

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[252] SWG Selection Report at 4-5; *see also* USTA/CTIA Reply Comments at 6..

[253] Neustar Bid, Technical Factors Part 2, § 1.6 at 1.6-1 (Document No. 3 of Neustar production).

[254] *See* RFP § 12.3; *see also* TRD § 6.

[255] *See* RFP § 12.3.

[256] *See* TRD §§ 3-5.

methods and procedures for the NPAC and its users reviewed and agreed upon with the industry.[257] All of these factors ensure that carriers will bear reasonable one-time transition costs, which are offset by the ongoing savings.

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[257] *See* RFP § 13.4.

[258] *See, e.g.*, LNPA Procurement Presentation Q & A in Denver Colorado: Telcordia, Inc., Transcript at 55:3-4, 56:3-6, 15; 244:17-20; 246:11-249:7 (Aug. 7, 2013) (Telcordia Transcript).

[259] *See* Telcordia Bid, RFP, Attachment to Question 12.3 at 20-26 (Telcordia00155-Telcordia00161).

[260] *Id.*; Telcordia Bid, RFP, Attachment to Question 14.3 (Telcordia00332-Telcordia00333); Telcordia Bid, RFP, Attachment to Question 15.1 at 28-29 (Telcordia00264-Telcordia00265).

[261] Telcordia Bid, RFP § 12.3 at 20-22 (Telcordia155-Telcordia157).

[redacted] **END HIGHLY CONFIDENTIAL**

In contrast, the greatly overstated transition-cost estimate relied on by Neustar does not take the RFP requirements, Telcordia's representations during the bidding process or the Recommendation's view of the industry's abilities into account.[263] The report assumes an extreme number of issues in the first year.[264] This assumption only works if a number of unlikely events all occur—for example, if the requirements are not stable, if recent changes are introduced, and if the industry does a poor job in accepting the new system. This outcome is unlikely **BEGIN CONFIDENTIAL** [redacted] **END CONFIDENTIAL**

3. The Recommendation Properly Addresses the LNPA Transition, Quality of Service and the IP Transition.

Neustar also faults the recommendation for its treatment of transition "risks," quality of service, and the IP Transition, but these criticisms are also off the mark. The RFP required bidders to address all of these issues, and **BEGIN CONFIDENTIAL** [redacted]

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[262] *Id.*

[263] *See* Hal Singer, *Estimating the Costs Associated with a Change in Local Number Portability Administration* (Jan. 2014), *available at* http://www.ei.com/downloadables/SingerCarrierTransition.pdf (last accessed Aug. 7, 2014).

[264] *Id.*

[redacted] ****END CONFIDENTIAL**** Neustar, in an effort to conjure up flaws with the report, suggests that the FoNPAC should have required bidders to build systems and subject those systems to third-party testing and to make transition arrangements that would ordinarily be made only offer a contract award, but these suggestions are patently unreasonable and are nothing but transparent attempts to erect barriers to competition.

a. Transition to a New LNPA.

Neustar's argument paints the transition to a new LNPA as fraught with peril and risk that cannot be mitigated. As explained in more detail in Part IV, this is incorrect. Moreover, the recommendation adequately addresses the transition to a new LNPA. As Neustar states in its own comments, ****BEGIN CONFIDENTIAL**** [redacted] ****END CONFIDENTIAL****

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[265] FoNPAC Selection Report at 11.

[266] *Id.* at 12.

[267] SWG Selection Report at 4.

[268] *Id.*

Neustar argues that the Recommendation does not provide adequate analysis. However, Neustar does not and cannot state what additional analysis should be required. Any additional review of the transition requires the establishment of plan with industry review and collaboration. Until a LNPA is chosen, the industry and the potential vendors cannot craft a transition plan.

Neustar's focus on the transition plan reveals its intent to construct barriers to competition. Neustar, as the current LNPA, did not submit a transition plan because, as the current LNPA, it will not need a transition if it is selected.[269] The benefit of convenience, however, is no substitute for the benefits of competition. Telcordia submitted a plan that not only meets the necessary technical requirements, but also mitigates transition risk.

b. Quality of Service.

Neustar further complains that in evaluating Telcordia's bid, ****BEGIN CONFIDENTIAL****[redacted] ****END CONFIDENTIAL****

This argument is nothing short of astounding—apparently suggesting that bidders should have been required to build a complete system and subject it to testing even in order to compete. While such a requirement might have helped Neustar by ensuring that no other vendor would submit a bid, it would have been patently unreasonable—and such a requirement was nowhere to be found in the RFP. Instead, the RFP required bidders to address quality-of-service issues in

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[269] Neustar Bid, Technical Factors Part 2 § 1.6 at 1.6-3 (Document No. 3 of Neustar production) (noting that Neustar, as the incumbent, is not required to submit a transition plan).

[270] Neustar Comments at 88-89.