March 23, 2015

Notice of Ex Parte

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

Re: Notice of Ex Parte Communication
(CC Docket No. 95-116; WC Docket No. 09-109)

Dear Ms. Dortch:

By this letter, the LNP Alliance1 responds, pursuant to 47 C.F.R. § 1.1206(b)(2)(iv), to issues raised by USTelecom, XO Communications, Verizon, CenturyLink and other large carriers (the “USTelecom Group”) in their ex parte letter dated March 19, 2015 and posted to the Commission’s website on Friday, March 20, and to the ex parte letter of Telcordia dated March 19, 2015 and also posted to the Commission’s website on Friday, March 20.2

Much of the USTelecom Group presentation represented an eleventh-hour rebuttal of the LNP Alliance ex parte filed over two months ago on January 12, 2015. The USTelecom Group, including XO, “highlighted the ease of any industry member to participate in the LNPA Selection Process, had it chosen to do so.”3 This new approach by XO and other multi-billion dollar carriers stands in stark contrast to XO’s previous ex partes where XO admitted that, even

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1 The LNP Alliance is a consortium of small and medium-sized (“S/M”) providers that currently consists of Comspan Communications, Inc., Telnet Worldwide, Inc., the Northwest Telecommunications Association (“NWTA”), and the Michigan Internet and Telecommunications Alliance (“MITA”). The LNP Alliance is focused on ensuring that the LNPA selection process takes into account the concerns of its S/M provider members and other similarly situated providers.


3 USTelecom March 19 Ex Parte at 1.
for a company of its size, with billions in revenues, it had “limited resources” for the “extensive
time commitment” required by participation in these meetings.\(^4\) XO’s earlier statements on this
issue are more on point: while the USTelecom Group now focuses on the paperwork required to
become a member of the North American Numbering Council (“NANC”) and the Selection
Working Group (“SWG”), the reason why small carriers have not participated in the past is
because of limited corporate resources. Even much larger carriers such as XO have struggled to
dedicate the resources necessary to participate in these industry fora. The USTelecom Group
does not mention that the North American Portability Management LLC (“NAPM”) that will
actually be negotiating the LNPA contract, requires a one-time $10,000 initiation fee plus an
annual capital call that has averaged $34,000 per year over the last seven years.\(^5\) LNP Alliance
members cannot afford to pay $34,000 per year when their actual porting costs represent a small
percentage of that annual ante. It is for this reason that the LNP Alliance opposes the
USTelecom Group’s rejection of any meaningful oversight of large-carrier-dominated NAPM
negotiations\(^6\) and why the LNP Alliance supports the New America Open Technology Institute
(“OTI”) proposal for an independent third party manager to certify that costs for small and
medium-sized carriers are reasonable and that the full range of services will be provided at the
same level of quality by the new LNPA as the prior LNPA.\(^7\)

The USTelecom Group, unable to refute the LNP Alliance arguments on the merits,
Attempts to stifle the LNP Alliance’s advocacy by claiming, first, that the LNP Alliance did not
participate, in the USTelecom Group’s judgment, sufficiently early in the process and, second,
by also claiming that the LNP Alliance did in fact participate through its trade associations.\(^8\) The
USTelecom Group’s suggestion that USTelecom itself has represented competitive small and
medium sized carriers such as those that comprise the LNP Alliance is laughable. The largest
carriers that dominate USTelecom have for years frustrated competition, invested time and
resources to raise entry barriers, and have made competitive entry more difficult. USTelecom is
a large part of the reason why the Commission must be very wary of an LNPA such as Ericsson
that is beholden to large contracts with some of the country’s largest carriers. One might think

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\(^4\) Letter from Tiki Gaugler, Senior Attorney, Regulatory, XO Communications, to Marlene H. Dortch,
Secretary, Federal Communications Commission, CC Docket No. 95-116; WC Docket No. 09-109, at 3
(Dec. 24, 2014).

\(^5\) See NAPM website, New Recruits Presentation, [https://www.napmllc.org/pages/MembershipInfo.aspx](https://www.napmllc.org/pages/MembershipInfo.aspx)
(last visited Mar. 23, 2015).

\(^6\) Id. at 4-5.

\(^7\) Letter from James C. Falvey, counsel to The LNP Alliance, to Marlene H. Dortch, Secretary, FCC, CC
Ex Parte”).

\(^8\) US Telecom March 19 Ex Parte at 2.
that the USTelecom Group is referring to small and medium sized incumbent or wireless carriers. But all of the major organizations that represent small incumbent and wireless carriers—NTCA, the Rural Broadband Alliance, the Competitive Carriers Association, and the WTA (“Small Rural Carriers”)—have all weighed in supporting the LNP Alliance’s position that the Commission should extend the time to make the LNPA selection and should first conduct a Regulatory Flexibility Analysis. So USTelecom cannot claim the mantle of speaking for small carriers.

The LNP Alliance members have also not been duly represented in this process by COMPTEL. COMPTEL did not participate in the Selection Working Group as it did in 1997 and, as such, was not in a position to represent small to medium-sized carriers. In fact, it was only as smaller carriers became aware that their interests were not represented by any trade association or other provider that the LNP Alliance was formed to address critical issues of transition costs, neutrality, and the failure to consider bids in the context of the IP Transition.

The LNP Alliance members have had ongoing concerns about this issue, they have the right to file public comments voicing their unique concerns, and the largest carriers are not in a position to deny smaller carriers their APA right to voice their concerns in public comments and letters. Neither the USTelecom Group nor the Commission can somehow claim that the LNP Alliance waived its right to participate in the later stages of these proceedings because they lacked the resources to participate as actively as the largest carriers in the earlier stages.

XO, with over $1,500,000,000 in annual revenues, also claims that it is similarly situated to LNP Alliance members. Any member of the NAPM that had the resources to pay $34,000 in dues does not share the same cost-sensitivity as LNP Alliance members that spend significantly less than that in annual porting expenses. While XO could hypothetically spend $50,000 on transition costs and make it up on recurring savings over five years, a small carrier

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9 Id.
10 It’s worth noting that earlier in the process, COMPTEL, in a November 1, 2013 letter, did raise many of the same issues now being raised by the LNP Alliance with the NAPM and with the Commission. See Letter from Angie Kronenberg, Chief Advocate and General Counsel, COMPTEL to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket No. 07-149, WC Docket No. 09-109 (filed Feb. 7, 2014).
spending the same amount would end up a net loser on the change to a new LNPA. The fact that the new LNPA will absorb its own expenses is irrelevant to determining how smaller carriers will absorb theirs. As the LNP Alliance and the Small Rural Carriers have emphasized, the Commission must conduct a Regulatory Flexibility Analysis to determine the impact on small carriers and other small businesses they serve. XO’s effort to claim that it stands in the shoes of small carriers also fails because XO has significantly greater economies of scale and stands to benefit more from ostensible reductions in recurring costs. The Commission should therefore take the time to measure the impact on small carriers before selecting a new LNPA.

The LNP Alliance also responds to the claims by Telcordia that the NANC fully considered the cost of the transition on small carriers. Telcordia, in its March 19 ex parte, relies on a Highly Confidential NANC Transcript that was not even filed in this docket until twenty days ago on Tuesday, March 3. Telcordia refers to certain pages of the Transcript which does not contain page numbers. As best as the LNP Alliance can make out, Telcordia seems to be relying on similarly hollow claims of solidarity with small carriers made by a few more billion-dollar or larger carriers. By definition, any NANC discussion of these issues was a discussion amongst larger and in some cases dominant carriers and included no input whatsoever from smaller carriers. To the extent these large carriers attempt to speak for smaller carriers, their statements are pure conjecture. As detailed above, these larger carriers are not similarly situated to the members of the LNP Alliance, and the late-filed NANC transcript, while highlighting the lack of transparency of the selection process, is not a substitute for the statutorily mandated Regulatory Flexibility Act analysis.

13 USTelecom March 19 Ex Parte at 4.
14 Letter from James C. Falvey, counsel to The LNP Alliance, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket No. 09-109, at 3 (Mar. 12, 2015).
As required by Section 1.1206(b), this *ex parte* notification is being filed electronically for inclusion in the public record of the above-referenced proceedings. If you have any questions or require additional information, please do not hesitate to contact me at 202.659.6655.

Sincerely,

/s/ James C. Falvey
James C. Falvey  
*Counsel for The LNP Alliance*

Enclosure

cc:   Daniel Alvarez  
       Amy Bender  
       Nick Degani  
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