awarded NeuStar a no-risk “do-over” in the event that any provision of the contract violates the law – with full retroactive repricing to the previous, inflated contract prices.

The inseverability clause cannot be tolerated by the Commission. The Commission must retain its ability to act independently to review NAPM’s and NeuStar’s actions, and to set aside those actions that are unlawful or contrary to Commission policy. Any other result transfers inherently governmental authority to NAPM and NeuStar, and eviscerates the Commission’s oversight and policymaking functions.

D. The Commission Has Full Legal Authority to Strike or Reform the NPAC Contracts Including Amendments 70 and 57.

The Commission has clear legal authority to strike or reform NeuStar’s de facto exclusive number portability contract. First, the FCC has plenary authority over numbering issues, pursuant to Section 251(e). Second, Section 201 of the Communications Act prohibits unjust and unreasonable contracts for telecommunications services. Third, the Master Agreement itself recognizes that the FCC may alter its terms by order.

Section 251(e) of the Communications Act gives the Commission independent plenary authority over numbering issues, which includes oversight of number portability administration; “[t]he Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States.”105 The Commission is also directed to ensure that “[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the

Without the Commission’s imprimatur there would be no long term database number portability mandate, no NAPM and no Master Contracts with NeuStar. Indeed, the Commission could directly have conducted competitive bids for number portability administration. These provisions, together with the Commission’s authority pursuant to Section 4(i), give the Commission full authority to reestablish competition in NPAC services by reforming the NPAC agreements.

Furthermore, Section 201(b) declares to be unlawful “any such charge, practice, classification, or regulation [in connection with interstate or foreign communications] that is unjust or unreasonable.” NeuStar has previously attempted to argue that NPAC services are not “telecommunications services,” but this argument lacks merit. The argument that portability database services are not common carrier services was squarely rejected by the Commission in the Commission’s 800/SMS Database Order. In that order, the Commission rejected arguments that the SMS administrator provided “administrative services,” not common carrier services, and instead concluded that access to the SMS database, which included inputting changes to the SMS database, was a common carrier service because it was “incidental to the provision of 800 access services.” So too is local number portability incidental to the provision of telephone services.

---

109 Provision of Access for 800 Service, Order, 8 FCC Rcd 1423, 1425-26 (1993). In fact, Congress stated that “the policies and purposes of this Act” include “vigorouss economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.” 47 U.S.C. 257(b). Sections 257(a) makes clear that these policies and purposes extend to the provision of services to “providers of telecommunications services and information services.” 47 U.S.C. § 257(a)(emphasis added).
110 Provision of Access for 800 Service, 8 FCC Rcd at 1426.
exchange service and CMRS. The Commission has long recognized that such "adjunct-to-basic" telecommunications services are regulated as telecommunications services.111

Nor do the *Mobile-Sierra* cases preclude or limit Commission action here.112 The *Mobile-Sierra* cases permit the Commission to overturn contractual provisions that, with respect to rates, are unjust and unreasonable, or, with respect to terms and conditions other than rates, are contrary to the public interest.113 That is exactly what Telcordia has demonstrated with respect to Amendment 70 (as well as Amendment 57).

Furthermore, the FCC’s authority cannot be avoided by characterizing the NAPM-NeuStar contracts as “private agreements.” In the first instance, such a characterization is counterfactual. As discussed above, these contracts would not exist, but for the FCC’s number portability directives. Moreover, they are funded by a mandatory collection carried out pursuant to FCC rule. As Tom Koutsky, NANC Chair said:

I do want to stress that I don’t view these [NPAC contracts] as private contracts between private parties. I believe this is a contract that does the public’s business, basically done at the authorization of the FCC to put in place a procedure of which will not just benefit the industry but it will also benefit consumers and businesses in the United States.114

In any event, even with respect to purely private contracts, the Commission has the statutory authority to order reformation. In its *MDU Exclusive Access Order*, the Commission found that it had the authority to reform private exclusive contracts based on

113 NeuStar Opposition at 16; *Western Union Telegraph Co. v. FCC*, 815 F.2d 1495, 1501 (D.C. Cir. 1987).
a provision of the Communications Act that mirrors Section 201. In that Order, the Commission found that the “unfair or deceptive acts or practices” prohibition of Section 628 of the Communications Act gave it direct authority to reform exclusive contracts. The Commission has never suggested that it would lack jurisdiction over telecommunications service contracts simply because they were entered into by private parties: to so hold would eviscerate the regulation of detariffed common carriers.

The Commission also has ancillary authority to reform Amendments 70 and 57. In the MDU Exclusive Access Order, the FCC found that it had ancillary authority based on Congress’s mandate that the Commission act to “promote competition and consumer choice,” to “make available . . . a rapid, efficient, Nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges,” and to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans. . . .” In addition to those mandates, the Telecommunications Act of 1996 includes similar mandates for the Commission that apply to Amendments 70 and 57. The Act establishes “a national policy framework” that is intended to “promote competition and reduce regulation . . . to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.” This mandate is directly reflected in Section 706 – which was also a basis of jurisdiction in the MDU Exclusive Access Order – and directs the Commission to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans. . . .” Furthermore, Section 257 states that it is national policy to promote

“vigorous economic competition, technological advancement and promotion of the public interest” in all aspects of the telecommunications market, including in the provision of services to “providers of telecommunications services and information services.” These provisions provide the Commission with even stronger ancillary authority than do the provisions cited by in the MDU Exclusive Access Order.

Finally, in the Master Agreement itself, Article 25 specifically acknowledges the Commission’s authority over the terms of the Agreement in general and the effects of Amendment 70 in particular. NeuStar cannot now claim that the Commission lacks such authority.

As a result, the Commission has (as one might expect) complete authority over NAPM, and Amendments 70 and 57. The Commission can strike or reform any provisions of the NeuStar/NAPM contract that are unjust and unreasonable or would otherwise be contrary to the public interest. Indeed, the Commission’s oversight role would be rendered meaningless if it had no authority to alter the NeuStar/NAPM agreements under any circumstances.

Accordingly, the Commission has full legal authority to strike or reform Amendment 70, and any other provisions of the Master Agreement that are unjust and unreasonable or violate the public interest.
E. The Commission Should Preserve the Status Quo Pending Completion of this Proceeding, Direct NANC to Complete the Development of Multivendor Peering Standards Forthwith, Conduct a Competitive Bid and then Terminate the NeuStar Contract Upon Implementation of those Competitive Awards.

The recent history of the NeuStar contract – particularly Amendments 57 and 70 – shows that the time has come for the Commission to start over with a competitive bid for NPAC services. It has already been over ten years since long term database number portability was implemented – and, as extended, the current contracts will run for at least six more years, until 2016, without any intervening competitive bidding. That is too long to go without competitive bidding: the Commission simply has no assurance that the industry – and ultimately consumers – are not being vastly overcharged. NAPM and NeuStar have shown repeatedly is that they will always sacrifice the public interest in competition and act in disregard of the Commission’s rules for – often illusory – short term benefits. The Commission can no longer be assured that the current structure and contracts for NPAC administration are, in the President’s words, “perform[ing their] functions efficiently and effectively while ensuring that its actions result in the best value for the taxpayers.”117 The only way to do so is to conduct a new, open and transparent competitive bid for a multivendor peering NPAC, to become effective as soon as services can be transitioned. In the interim, the Commission should use the current pricing terms of Amendment 70 (other than those applicable to URI fields) to establish an interim rate for NeuStar, to apply until the new contracts are implemented and the current contracts are awarded.

117 President’s Government Contracting Directive, supra, n. 5 at 3.
While the Commission considers this petition and conducts a review of the NeuStar Master Agreement, it must also make sure that NAPM and NeuStar are not permitted to harm competition further – or to take any further actions that attempt to preempt or box in the Commission. Accordingly, as requested in a separate letter, the Commission should immediately direct NAPM and NeuStar not to take any steps to implement the URI fields described in Amendment 70 – or any other URIs other than NANC Change Order 399 – in the NPAC database pending further review by the Commission. In addition, the Commission should direct NAPM that it shall no longer execute new contract amendments without prior approval by the Commission. These interim steps will ensure that the status quo does not further deteriorate.

The time is overdue for the Commission to terminate NAPM’s interim authority to manage and oversee the NPAC. With four no-bid contract extensions since the initial bid, NAPM has repeatedly shown that it cannot act in a transparent, above-board manner, consistent with NANC and FCC oversight, or even the FCC’s rules. At a very minimum, the FCC should commence the rulemaking that it contemplated in 1997 to examine the issue of NPAC oversight and management. The Commission should conduct the new NPAC services procurement itself – as it has now done with every other numbering administration contract.

In order to conduct a new bid for a multivendor peering NPAC, the NANC and the LNPA Working Group will have to complete work on the standards for such a database structure. Such a structure is fully technically feasible, and DNS and ENUM

118 Telcordia is not suggesting that the Commission oust NANC from a role in reviewing and making recommendations with respect to proposed contract amendments, only that such amendments not be executed until the Commission has approved doing so.
today operate using peered databases. The Commission should task NANC with completing those standards within three months, so that bidding can commence immediately once the Commission has fully considered this petition.

In order to open up the NPAC services market and to ensure that NPAC services are performed efficiently and effectively while resulting in the best value for the taxpayers, Telcordia requests that the Commission promptly hold a competitive bid for multivendor peering services, and terminate the existing NPAC contracts as soon as those new contracts can be awarded and implemented. In the interim, while the standstill is in effect NeuStar can be compensated according to Amendment 70’s pricing provisions, which should provide it with more than just compensation for this period.
CONCLUSION

The Commission should act without delay to reestablish its statutory role with respect to NPAC administration, and to ensure that the public interest is protected. That can be done only by conducting a new competitive procurement for a multivendor NPAC, and then terminating the current contracts once that procurement is implemented. To be clear, the existing NPAC should continue to be compensated according to the current contract until those new contracts are in place. Unless the Commission acts, and acts promptly, however, not only will consumers and the telecommunications industry be denied the cost reductions that will flow from competition, but the Commission will also be endangering competition in the ENUM provisioning market. The Commission should not allow that to occur through inaction.

Respectfully submitted,

John Nakahara
Paul Margie
Amy Richardson
Linda Coffin
WILTSHIRE & GRANNIS LLP
1200 18th Street NW
Washington, DC 20036
(202) 730-1320

Counsel for Telcordia Technologies, Inc.

Date: May 20, 2009
Exhibit 1
Exhibit 99.1

Amendment No. 70 (NE)
SOW:  
   a No
   o Yes

Pursuant to Instruction 2 to Item 601 of Regulation S-K, NeuStar, Inc. has filed an agreement with the North American Portability Management LLC, as successor to Northeast Carrier Acquisition Company, LLC, which is one of seven agreements that are substantially identical in all material respects other than the parties to the agreements. North American Portability Management, LLC succeeded to the interests of Northeast Carrier Acquisition Company, LLC and each of the other entities listed below. The following list identifies the other parties to the six agreements that have been omitted pursuant to Instruction 2 to Item 601:

- LNP, LLC (Midwest)
- Southwest Region Portability Company, LLC
- Western Region Telephone Number Portability, LLC
- Southeast Number Portability Administration Company, LLC
- Mid-Atlantic Carrier Acquisition Company, LLC
- West Coast Portability Services, LLC

AMENDMENT TO
CONTRACTOR SERVICES AGREEMENT FOR
NUMBER PORTABILITY ADMINISTRATION CENTER / SERVICE MANAGEMENT SYSTEM
PRICING AND OTHER MODIFICATIONS
CONFIDENTIAL
Page 1
AMENDMENT NO. 70 UNDER CONTRACTOR SERVICES AGREEMENT
FOR NUMBER PORTABILITY ADMINISTRATION CENTER/SERVICE
MANAGEMENT SYSTEM

Pricing and Other Modifications

1. PARTIES
This Amendment No. 70 (this "Amendment") is entered into pursuant to Article 30 of, and upon execution shall be a part of, the Contractor Services Agreement for Number Portability Administration Center/Service Management System, as amended and in effect immediately prior to the Amendment Effective Date (each such agreement referred to individually as the "Master Agreement" and collectively as the "Master Agreements"), by and between NeuStar, Inc., a Delaware corporation ("Contractor"), and the North American Portability Management LLC, a Delaware limited liability company (the "Customer"), as the successor in interest to and on behalf of the Northeast Carrier Acquisition Company, LLC (the "Subscribing Customer").

2. EFFECTIVENESS AND TERM
This Amendment shall be effective as of the last date of execution below (the "Amendment Effective Date"), conditioned upon execution by Contractor and Customer on behalf of all the limited liability companies listed below for the separate United States Service Areas (the "Subscribing Customers").

- Mid-Atlantic Carrier Acquisition Company, LLC
- LNP, LLC (Midwest)
- Northeast Carrier Acquisition Company, LLC
- Southeast Number Portability Administration Company, LLC
- Southwest Region Portability Company, LLC
- West Coast Portability Services, LLC
- Western Region Telephone Number Portability, LLC

3. DEFINED TERMS
The number in the upper left-hand corner refers to this Amendment. Capitalized terms used herein without definition or which do not expressly reference another agreement shall have the meanings as defined in the Master Agreement. The term "Allocated Payor" shall have the same meaning set forth in Article 1 of the Master Agreement, as amended by Section 9.2 of Amendment No. 42, i.e., any of the entities that the Contractor is entitled to invoice for Allocated Charges under the FCC’s Matter of Telephone Number Portability, Third Report and Order, CC Docket 95-116, RM 8535, FCC 98-82, as it may subsequently be revised or amended (the "Cost Recovery Order").

4. CONSIDERATION RECITAL
Amendment No. 70 (NE)

SOW:  
- No
- Yes

In consideration of the terms and conditions set forth in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and Customer agree as set forth in this Amendment. The modifications and amendments made herein were negotiated together, and each is made in consideration of all of the other terms and conditions herein. All such modifications and amendments are interrelated and are dependent on one another. No separate, additional or different consideration is contemplated with respect to the modifications and amendments herein.

Contractor and Customer acknowledge that the agreements hereunder have been offered and accepted in part because of past and expected TN Porting Event volumes in the Service Area, and in part because Contractor provides Services, and Customer receives Services, in the Service Area in accordance with the NPAC/SMS Software, functionality, Change Orders, terms and conditions. The “NPAC/SMS Features”) required under all amendments to and Statements of Work under the Master Agreement, and which NPAC/SMS Features have been elected and purchased by Customer on behalf of the Subscribing Customer as of the Amendment Effective Date. The Parties agree and acknowledge that Article 29 of the Master Agreement shall not apply with respect to the execution and delivery of this Amendment, so that this Amendment shall not be considered to be the provision of a centralized NPAC solution.

Neither Contractor nor Customer has made or is hereby making any representations with respect to either the reliability or likelihood of expected or forecasted TN Porting Event volumes in this Service Area individually or cumulatively with any other United States Service Areas, cumulatively or with respect to the realization of any expected or forecasted cost savings. Furthermore, Customer does not guarantee or otherwise promise or assure any TN Porting Event volumes in this Service Area, either individually or cumulatively with other United States Service Areas.

5. APPLICABLE DOCUMENTS

The following internal documents are applicable to this Amendment:

- Functional Requirements Specifications
- Requirements Traceability Matrix
- System Design
- Detailed Design
- Integration Test Plan
- System Test Plan
- NPAC Software Development Process Plan
- User Documentation

6. IMPACTS ON MASTER AGREEMENT

The following portions of the Master Agreement are impacted by this Amendment:

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Amendment No. 70 (NE)
SOW:  No
- Yes

<table>
<thead>
<tr>
<th></th>
<th>Master Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>Exhibit B Functional Requirements Specification</td>
</tr>
<tr>
<td>None</td>
<td>Exhibit C Interoperable Interface Specification</td>
</tr>
<tr>
<td>Yes</td>
<td>Exhibit D Pricing Schedules</td>
</tr>
<tr>
<td>None</td>
<td>Exhibit F Project Plan and Test Schedule</td>
</tr>
<tr>
<td>None</td>
<td>Exhibit G Service Level Requirements</td>
</tr>
<tr>
<td>None</td>
<td>Exhibit H Reporting and Monitoring Requirements</td>
</tr>
<tr>
<td>None</td>
<td>Exhibit J User Agreement Form</td>
</tr>
<tr>
<td>None</td>
<td>Exhibit K External Design</td>
</tr>
<tr>
<td>None</td>
<td>Exhibit L Infrastructure/Hardware</td>
</tr>
<tr>
<td>None</td>
<td>Exhibit M Software Escrow Agreement</td>
</tr>
<tr>
<td>Yes</td>
<td>Exhibit O Intermodal Ported TN Identification Service Agreement</td>
</tr>
<tr>
<td>None</td>
<td>Exhibit P LEAP Service Agreement</td>
</tr>
<tr>
<td>None</td>
<td>Disaster Recovery</td>
</tr>
<tr>
<td>None</td>
<td>Back Up Plans</td>
</tr>
<tr>
<td>Yes</td>
<td>Gateway Evaluation Process (Article 32 of Master Agreement)</td>
</tr>
</tbody>
</table>

7. PRICING

7.1 Exhibit E to Master Agreement

As of the Amendment Effective Date, Exhibit E of the Master Agreement is hereby amended and restated in its entirety as set forth in Attachment I hereunder, and Rate Card 5 referenced therein shall be effective retroactively to commence January 1, 2009.

7.2 Addition of New Article 35 to Master Agreement

The Master Agreement is hereby amended as of the Amendment Effective Date by the addition of new Article 35, which will read in its entirety as follows:

ARTICLE 35 — AGGREGATE PORTING CHARGE AND ADJUSTMENTS

35.1 Calculation of Net National Monthly Aggregate Porting Charge and the Aggregate Porting Charge for the Service Area

The "Net National Monthly Aggregate Porting Charge" for the Applicable Month is computed as follows:

The Base National Monthly Fixed Porting Fee (as defined in Section 35.3 below) for the Applicable Month

- Minus the National Monthly Fixed Porting Adjustment (as defined in Section 35.4) in the Applicable Month, if any

- Minus the National Monthly Incentive Porting Adjustment (as defined in Section 35.5) for the Applicable Month, if any
Amendment No. 70 (NE)
SOW:  ☑ No
     o Yes
resulting in the “Adjusted National Monthly Porting Fee” for the Applicable Month

- Minus the National Monthly Floor Threshold Adjustment (as defined in Section 35.6) for an Applicable Month, if any; or Plus the National Monthly Ceiling Threshold Adjustment (as defined in Section 35.7) for an Applicable Month, if any

resulting in the Net National Monthly Porting Fee

- Minus the Monthly Downward Event Triggered Charge Adjustment (as defined in Section 37.2(a) for an Applicable Month), if any

+ Plus the Monthly Upward Event Triggered Charge Adjustment (as defined in Section 37.1(a) for an Applicable Month), if any

resulting in the Net National Monthly Aggregate Porting Charge.

A Net Regional Monthly Aggregate Porting Charge for this Service Area is then computed for every calendar month (the “Applicable Month”) of each calendar year (the “Applicable Year”) during the Initial Term of the Agreement, and shall equal the product of (a) the Net National Monthly Aggregate Porting Charge computed for the Applicable Month, times (b) the fraction having a numerator equal to the average monthly number of TN Porting Events that occurred in this Service Area in (i) the Applicable Month and in (ii) the 11 calendar months immediately preceding the Applicable Month and the denominator equal to the average monthly number of cumulative TN Porting Events that occurred in all United States Service Areas in which Contractor provides NPAC/SMS Services under the Master Agreements with Customer or the Subscribing Customers in (i) the Applicable Month and in (ii) the 11 calendar months immediately preceding the Applicable Month.

The Net Regional Monthly Aggregate Porting Charge (as defined above) for this Service Area may be subject to additional adjustments as follows:

- Minus the Monthly GEP Porting Charge Adjustment (as defined in Section 32), if any

resulting in the Aggregate Porting Charge (as defined in Section 6.2(b)(ii) of this Agreement).

35.2 Nomenclature

For the purposes of computing the Net National Monthly Aggregate Porting Charge, the term “issue” and its derivatives shall refer to the actual reduction of charges set forth in
Amendment No. 70 (NE)

SOW:  \( \exists \) No
\( \varnothing \) Yes

an invoice, by the share or portion of such issued installment of a credit, adjustment or reduction set forth in such invoice after the imposition of any monthly or annual caps or limitations on the credit, adjustment or reduction.

### 35.3 Base National Monthly Fixed Porting Fee

For purposes of this Article 35, the "Base National Monthly Fixed Porting Fee" for an Applicable Month is the fixed charge (prior to the application of any adjustments) for all TN Porting Events that occur during the Applicable Month in all United States Service Areas in which Contractor provides NPAC/SMS Services under the Master Agreements with Customer or the Subscribing Customers, no matter how many TN Porting Events actually occur, as set forth in Column C immediately below, based on the Base National Annual Fixed Porting Fee showing in Column B below corresponding to the Applicable Year in Column A in which the Applicable Month is included:

<table>
<thead>
<tr>
<th>APPLICABLE YEAR (COLUMN A)</th>
<th>BASE NATIONAL ANNUAL FIXED PORTING FEE (COLUMN B)</th>
<th>BASE NATIONAL MONTHLY FIXED PORTING FEE (COLUMN C)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>$ 340,000,000</td>
<td>$ 28,333,333</td>
</tr>
<tr>
<td>2010</td>
<td>$ 362,100,000</td>
<td>$ 30,175,000</td>
</tr>
<tr>
<td>2011</td>
<td>$ 385,636,500</td>
<td>$ 32,136,375</td>
</tr>
<tr>
<td>2012</td>
<td>$ 410,702,872</td>
<td>$ 34,225,239</td>
</tr>
<tr>
<td>2013</td>
<td>$ 437,398,559</td>
<td>$ 36,449,880</td>
</tr>
<tr>
<td>2014</td>
<td>$ 465,829,466</td>
<td>$ 38,819,122</td>
</tr>
<tr>
<td>2015</td>
<td>$ 496,108,381</td>
<td>$ 41,342,365</td>
</tr>
</tbody>
</table>

The Base National Aggregate Annual Fixed Fee (and consequently the Base National Monthly Fixed Fee) is computed above subject to an annual escalator equal to Six and One Half Percent (6.5%), which escalator shall continue to apply during any extension period under Article 24 of the Agreement.

### 35.4 National Monthly Fixed Porting Adjustment

For purposes of this Article 35, the "National Monthly Fixed Porting Adjustment" for an Applicable Month is an adjustment that reduces the Base National Monthly Fixed Porting Fee in accordance with Section 35.1. The National Monthly Fixed Porting Adjustment for an Applicable Month is a fixed and definite amount, without regard to the occurrence of TN Porting Events or any adjustments, as set forth in Column B immediately below, based on the National Annual Fixed Porting Adjustment shown in Column B below corresponding to the Applicable Year in Column A in which the Applicable Month is included:

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35.5 National Monthly Incentive Porting Adjustment

For purposes of this Article 35, the National Monthly Incentive Porting Adjustment (as defined below) is an adjustment that reduces the Base National Monthly Fixed Porting Fee in accordance with Section 35.1. The "National Monthly Incentive Porting Adjustment" for an Applicable Month is the sum of the "National Monthly TN Inventory One-Time Adjustment" for the Applicable Month and the "National Monthly New URI One-Time Adjustment" for an Applicable Month.

(a) National Monthly TN Inventory One-Time Adjustment

If the National TN Inventory (as defined below) meets or exceeds the "National TN Inventory Threshold" (set forth below) at the end of any calendar month in the Applicable Year associated with that National TN Inventory Threshold (the "National TN Inventory Adjustment Event"), then Contractor shall determine a total amount from the table below (each, a "National TN Inventory One-Time Adjustment").

<table>
<thead>
<tr>
<th>APPLICABLE YEAR</th>
<th>NATIONAL TN INVENTORY THRESHOLD</th>
<th>NATIONAL TN INVENTORY ONE-TIME ADJUSTMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>380,000,000</td>
<td>$ 7,500,000</td>
</tr>
<tr>
<td>2010</td>
<td>420,000,000</td>
<td>$ 7,500,000</td>
</tr>
<tr>
<td>2011</td>
<td>470,000,000</td>
<td>$ 7,500,000</td>
</tr>
</tbody>
</table>

For purposes of this Section 35.5 and Section 35.7, the "National TN Inventory" shall mean the number, measured as of the end of the last day of each calendar month in an Applicable Year, of the active Subscription Versions (SVs) in all United States Service Areas in the NPAC/SMS administered by Contractor under the several Master Agreements. A National TN Inventory Adjustment Event may only occur in Applicable Years 2009, 2010 and 2011.
Amendment No. 70 (NE)

SOW:  
- No
- Yes

Upon a National TN Inventory Adjustment Event, Contractor shall divide the National TN Inventory One-Time Adjustment by 12 (resulting in the “National Monthly TN Inventory One-Time Adjustment”). The Service Area’s share of the National Monthly TN Inventory One-Time Adjustment (apportioned in the same manner as the Net National Monthly Aggregate Porting Charge is apportioned to derive the Net Regional Monthly Aggregate Porting Charge in Section 35.1) shall be reflected commencing with the invoices issued to Allocated Payors in the Service Area, pursuant to Section 35.8 of this Agreement, in the first month of the subsequent calendar quarter immediately after the month in which the National TN Inventory Threshold Event occurred, and continuing thereafter in each of the subsequent 11 calendar months.

(b) National Monthly New URI One-Time Adjustment

If (A) Customer executes, on behalf of the seven (7) Subscribing Customers that as of the Amendment Effective Date are a party to a Master Agreement with Contractor a Statement of Work or other amendment for the implementation in the NPAC/SMS of a Covered New URI (as that term is defined below), (B) Contractor has implemented the Covered New URI, (C) Customer has accepted the Covered New URI for operational use by Users, (D) the Covered New URI is included in the group of SV data fields set forth in Footnote 5 to Exhibit E to which the modify of an Active SV results in a TN Porting Event, (E) the Covered New URI has not triggered a New URI One-Time Adjustment in any preceding year and is now eligible for a New URI One-Time Adjustment and (F) no other Covered New URI has triggered a New URI One-Time Adjustment in the current calendar year (the “New URI Adjustment Event”), then Contractor shall calculate a National One-Time New URI Adjustment (as defined below) with respect to each such Covered New URI; provided, however, that in any single calendar year no more than one (1) National One-Time New URI Field Adjustment (as defined below) can be triggered. The occurrence of a New URI Adjustment Event shall be measured on the last day of each Calendar Month to determine whether to issue a National Monthly New URI One-Time Adjustment (as defined below). A National One-Time New URI Adjustment may only occur in calendar years 2009, 2010 and 2011.

Upon a New URI Adjustment Event, Contractor shall issue the resulting National Monthly One-Time New URI Adjustment to reduce the Base National Monthly Fixed Porting Fee in accordance with Article 35.1.

For purposes of this Section, a “Covered New URI” shall mean only the following three NPAC/SMS parameters in the Optional Data field associated with a Subscription Version (SV), which parameters are, as of the Amendment Effective Date of Amendment No. 70, the subject of Change Orders approved by the Local Number Portability Administration Working Group (LNPA-WG):

- a. SMS URI
- b. Voice URI
- c. MMS URI

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Page 8
Amendment No. 70 (NE)

SOW:  
- No
- Yes

Upon a New URI Adjustment Event associated with a Covered New URI, Contractor shall issue an adjustment equal to Seven Million Five Hundred Thousand Dollars ($7,500,000) (the "National One-Time New URI Field Adjustment") for each such Covered New URI.

Upon attainment of conditions (A), (B) and (C) defining a New URI Adjustment Event above, the Covered New URI shall be included in the group of SV data fields set forth in Footnote 5 to Exhibit E to which the modify of an Active SV results in a TN Porting Event.

Upon a New URI Adjustment Event, Contractor shall divide the National One-Time New URI Field Adjustment by 12 (resulting in the "National Monthly New URI One-Time Adjustment"). The Service Area's share of the National Monthly New URI One-Time Adjustment (apportioned in the same manner as the Net National Monthly Aggregate Porting Charge is apportioned to derive the Net Regional Monthly Aggregate Porting Charge in Section 35.1) shall be issued commencing with the invoices issued to Allocated Payors in the Service Area, pursuant to Section 35.8 of this Agreement, in the first calendar month of the calendar quarter immediately after the calendar month in which the New URI Adjustment Event occurred, which shall be the first Applicable Month, and in the 11 subsequent Applicable Months.

35.6 National Monthly Floor Threshold Adjustment

For purposes of this Article 35, the "National Monthly Floor Threshold Adjustment" is an adjustment that reduces the Adjusted National Monthly Porting Fee in accordance with Section 35.1.

If the total number of TN Porting Events occurring in all U.S. Service Areas administered by Contractor under Master Agreements in the calendar year immediately preceding an Applicable Year (a "Measuring Year"), with the first Applicable Year for purposes of this Section 35.6 being 2010, is less than the National TN Porting Event Floor (as defined below) for that Measuring Year, as set forth below (the "National Floor Threshold Event"), Contractor shall compute an adjustment (the "National Floor Adjustment") in accordance with this Section 35.6.

The "National TN Porting Event Floor" for a Measuring Year shall equal the product of (A) and (B) immediately below:

A. the Imputed Transaction Volume (as that term is defined below) for the Measuring Year; and
B. the Floor Percentage (as set forth in the table immediately below) for that Measuring Year.

<table>
<thead>
<tr>
<th>MEASURING YEAR</th>
<th>FLOOR PERCENTAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>80%</td>
</tr>
<tr>
<td>2010 and beyond</td>
<td>75%</td>
</tr>
</tbody>
</table>

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SOW:  □ No
       ☑ Yes

The Imputed Transaction Volume for purposes of computing the National TN Porting Event Floor for a Measuring Year is a measure of TN Porting Event amounts derived from the sum of the Adjusted National Monthly Porting Fee for all calendar months in the Measuring Year. The Imputed Transaction Volume in a Measuring Year is the number of TN Porting Events that would be necessary to have occurred to result in an amount equal to the sum of the Adjusted National Monthly Porting Fee for all of the calendar months in the Measuring Year if Amendment No. 57 Pricing (as defined below) would have applied to that number of TN Porting Events. "Amendment No. 57 Pricing" shall mean the pricing for TN Porting Events set forth in Attachment 1A to Exhibit E of the Master Agreement (which corresponds to Rate Card No. 4, introduced in Amendment No. 57, and which was in effect immediately prior to the Amendment Effective Date).

Upon the occurrence of a National Floor Threshold Event, the "National Floor Adjustment" shall for such Measuring Year equal:

A. the product of (1) the National TN Porting Event Floor AND (2) the Effective Rate (under Amendment No. 57 Pricing) corresponding to such National TN Porting Event Floor amount

MINUS

B. the product of (1) the total number of TN Porting Events that occurred in all U.S. Service Areas administered by Contractor under Master Agreements during the Measuring Year AND (2) the Effective Rate (under Amendment No. 57 Pricing) corresponding to such total number of TN Porting Events in all U.S. Service Areas administered by Contractor under Master Agreements in the Measuring Year.

The National Floor Adjustment shall be divided by 12 to obtain the "National Monthly Floor Adjustment," and the Adjusted National Monthly Porting Fee for Applicable Months in the Applicable Year shall be decreased by an amount equal to the resulting National Monthly Floor Adjustment in accordance with Section 35.1 above.

35.7 National Monthly Ceiling Threshold Adjustment

For purposes of this Article 35, the "National Monthly Ceiling Threshold Adjustment" is an adjustment that increases the Adjusted National Monthly Porting Fee in accordance with Section 35.1.

If the total number of TN Porting Events occurring in all U.S. Service Areas administered by Contractor under Master Agreements in a Measuring Year, with the first Applicable

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  o Yes

Year for purposes of this Section 35.7 being 2010, is greater than the National TN Porting Event Ceiling for that Measuring Year, as set forth below (the “National Ceiling Threshold Event”), Contractor shall compute the National Ceiling Threshold Adjustment (as defined below) in accordance with this Section 35.7.

The “National TN Porting Event Ceiling” for a Measuring Year shall equal the sum of the following (A) and (B) immediately below:

A. the product of (1) the Imputed Transaction Volume (as that term is defined below) for the Measuring Year and (2) the Ceiling Percentage (as defined below) for that Measuring Year

PLUS

B. the National TN Ceiling Threshold Increase (as defined below).

The Imputed Transaction Volume for purposes of computing the National TN Porting Event Ceiling for a Measuring Year is a measure of TN Porting Event amounts derived from the sum of the Base National Monthly Fixed Porting Fee minus the National Monthly Fixed Porting Adjustment for all calendar months in the Measuring Year. The Imputed Transaction Volume in a Measuring Year is the number of TN Porting Events that would be necessary to have occurred to result in an amount equal to the above-referenced summation for all of the calendar months in the Measuring Year if the Amendment No. 57 Pricing would have applied to that number of TN Porting Events.

The “Ceiling Percentage” in a Measuring Year shall equal the sum of the following:

A. the “Base Ceiling Percentage” of 145% for each Measuring Year

PLUS

B. New URI Field Ceiling Adjustment (defined below).

For purposes of computing the Ceiling Percentage, the “New URI Field Ceiling Adjustment” shall equal 10 percentage points for each Covered New URI for which a National One-Time New URI Field Adjustment has been issued (even if not fully issued on invoices), pursuant to Section 35.5(b).

A “National TN Ceiling Threshold Increase” shall be computed as follows: if the National TN Inventory number in a Measuring Year has increased from the previous calendar year, then the amount of the annual National TN Porting Event Ceiling for that associated Applicable Year shall be increased one time only by the product of the following:

A. 1.1
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      o Yes

TIMES

B. the net increase in the National TN Inventory number.
whereby the National TN Inventory shall be measured for each of calendar year 2009, 2010 and 2011 as of the beginning of January 1 and the end of December 31 of each such calendar year (for example, if the TN Inventory number measured on January 1, 2009 equals 400 million and the TN Inventory number measured on December 31, 2009 equals 450 million, then the corresponding National TN Ceiling Threshold Increase for calendar year 2010 shall equal 50 million [i.e., 1.1 x 50 million], but only for calendar year 2010 as the Applicable Year).

Upon the occurrence of a National Ceiling Threshold Event, the “National Ceiling Threshold Adjustment” shall for such Measuring Year equal:

A. the product of (1) the total number of TN Porting Events that occurred in all U.S. Service Areas administered by Contractor under Master Agreements during the Measuring Year AND (2) the Effective Rate (under Amendment No. 57 Pricing) corresponding to such total number of TN Porting Events in all U.S. Service Areas administered by Contractor under Master Agreements in the Measuring Year

MINUS

B. the product of (1) the National TN Porting Event Ceiling AND (2) the Effective Rate (under Amendment No. 57 Pricing) corresponding to such National TN Porting Event Ceiling amount.

The National Ceiling Threshold Adjustment shall be divided by 12 to obtain the National Monthly Ceiling Threshold Adjustment, and the Adjusted National Monthly Porting Fee for Applicable Months in the Applicable Year shall be increased by an amount equal to the resulting National Monthly Ceiling Threshold Adjustment in accordance with Section 35.1 above.

35.8 Division, Application and Invoicing Among Allocated Payors in the Service Area

(a) Issuance of a Covered Adjustment

For purposes of this Article 35, a “Covered Adjustment” shall mean any of the following:

• National Monthly Fixed Porting Adjustment
• National Monthly Incentive Porting Adjustment
• National Monthly Floor Threshold Adjustment

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- Monthly Downward Event Triggered Charge Adjustment
- Monthly GEP Porting Charge Adjustment

Each Allocated Payor’s share of each of a Covered Adjustment shall be issued in the same manner as the division, apportioning and invoicing of Allocated Charges is determined under SOW and in accordance with the Cost Recovery Order, pursuant to Section 6.6(c) of this Agreement, and shall be issued as a reduction against all charges for Services shown on such invoice and allocable or chargeable to such Allocated Payor under the Master Agreement, but not including charges allocable or chargeable pursuant to a Statement of Work for Additional Services. If for any Allocated Payor the amount of a Covered Adjustment issued on that invoice does not apply in full such Allocated Payor’s share of the Covered Adjustment, then the remaining share of such unapplied Covered Adjustment allocable to that Allocated Payor shall be issued again on the next monthly invoice, and any subsequent invoices as necessary, of such Allocated Payor in the amount of the lesser of (i) the full amount of the remaining unapplied amount of the Covered Adjustment allocable to that Allocated Payor or (ii) the full amount of all charges for Services shown on such invoice and allocable or chargeable to such Allocated Payor under this Agreement, but not including charges allocable or chargeable pursuant to a Statement of Work for Additional Services, until the share of each Covered Adjustment allocable to that Allocated Payor is fully issued. In no event shall any amount of a share of a Covered Adjustment that is not fully issued result in a monetary payment of any kind, including, without limitation, as a result of the expiration or termination of this Agreement, other than the application of such Covered Adjustment as a reduction against charges for Services shown on such invoice and allocable or chargeable to such Allocated Payor.

(b) Invoice Itemization

The invoices in which each Allocated Payor’s share of the Covered Adjustment is first issued (as of the Amendment Effective Date of Amendment No. 70 ) shall clearly identify and itemize the amount of both the amount of the Covered Adjustment and the share of the Covered Adjustment allocable to the Allocated Payor that is issued on the invoice. Any amount of such Covered Adjustment and an Allocated Payor’s share of any of the Covered Adjustment that remains after issuance on that invoice shall be aggregated with and added to amounts of the Allocated Payor’s share of such Covered Adjustment remaining for application on future invoices. Any such amounts of such Covered Adjustment and the Allocated Payor’s share of the Covered Adjustment issued on subsequent invoices shall be clearly identified on such invoice and any subsequent invoices.

(c) Invoice Explanation and Records

Each Allocated Payor shall be provided by Contractor with access, at no additional charge, to a secure, password-protected Web site that will provide a report identifying the issuance and application of the Allocated Payor’s share of each Covered Adjustment.
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SOW:  

- No
- Yes

Such report will be provided for a period of twelve (12) months after the date of the invoice in which each such Covered Adjustment was last applied. Further, Contractor shall consult with Customer prior to issuance of a form cover letter to accompany those invoices to Allocated Payors for which amounts of the Covered Adjustment are first issued. Notwithstanding the foregoing, Contractor shall continue to issue its explanatory cover letter with its invoices.

(d) Preservation of Rights of Setoff

Allocated Payors retain their right of set-off against all charges for Services allocable to Allocated Payors under this Agreement, including, but not limited to Aggregate Porting Charge, for Contractor’s failure to properly and accurately compute, issue and apply any Covered Adjustment.

8. INVOICES ISSUED AS OF THE AMENDMENT EFFECTIVE DATE

8.1 No Cost Development

The development and implementation of the invoices as required under this Article 8 shall be at no cost to Customer and Allocated Payors in the Service Area.

8.2 January 2009 Through May 2009 Invoices

For purposes of Section 35.8(b) of the Master Agreement, the setting forth of the share of a Covered Adjustment in a Monthly Invoice shall not include the identification or itemization of the National Monthly Fixed Porting Adjustment for the following 2009 invoices: January, February, March, April and May (the “First Group of Invoices”). Contractor shall send the January 2009 invoice to Allocated Payors (scheduled for sending by the 11th Business Day of February, 2009) no later than February 28, 2009. The sending by such date shall (with respect to sending of the January 2009 invoice) constitutes satisfaction of Element No. 7a, Billing Timeliness of Delivery Satisfaction, pursuant to Article 32 of the Master Agreement.

The computation, division, apportioning, issuance, application, and invoicing of any invoices in the First Group of Invoices sent under Exhibit E, as amended by this Amendment, shall be auditable and included in determining “Billing Timeliness” for purposes of Element No. 7a, determining “Billing Accuracy” for purposes of Element No. 7b, and determining “Reporting” for purposes of Element No. 2 of the Gateway Evaluation Process, as set forth in Article 32 of the Agreement, only upon the third (3rd) Billing Cycle after its sending; provided that Customer and Contractor have issued an updated GEP Metrics Document as set forth in Article 32 of this Agreement. All invoices in the First Group of Invoices issued prior to the date of such Third
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SOW:

- No
- Yes

Billing Cycle shall be deemed timely for purposes of Element No. 7a, accurate for purposes of Element No. 7b, satisfied for purposes of Element No. 2 of the Gateway Evaluation Process. Nothing herein shall preclude Contractor from issuing an adjustment credit to reflect the proper computation, division, apportioning, issuance, application, and invoicing under any one or more invoices issued thereafter in accordance with the updated GEP Metrics Document. For purposes of the GEP, a copy of this Amendment shall serve as a waiver letter signed by Contractor and Customer.

8.3 June 2009 Invoices and Thereafter

For purposes of Section 35.8(b) of the Master Agreement, the setting forth of the share of a Covered Adjustment in a Monthly Invoice shall include the identification and itemization of the National Monthly Fixed Porting Adjustment beginning with the June 2009 invoice.

The computation, division, apportioning, issuance, application, and invoicing of the June 2009 and July 2009 invoices under Exhibit E, as amended by this Amendment, shall be auditable and included in determining “Billing Timeliness” for purposes of Element No. 7a, determining “Billing Accuracy” for purposes of Element No. 7b, and determining “Reporting” for purposes of Element No. 2 of the Gateway Evaluation Process, as set forth in Article 32 of the Agreement, only upon the third (3rd) Billing Cycle after its sending; provided that Customer and Contractor have issued an updated GEP Metrics Document as set forth in Article 32 of this Agreement. All invoices issued prior to the date of such invoice after the Third Billing Cycle shall be deemed timely for purposes of Element No. 7a, accurate for purposes of Element No. 7b, satisfied for purposes of Element No. 2 of the Gateway Evaluation Process. Nothing herein shall preclude Contractor from issuing an adjustment credit to reflect the proper computation, division, apportioning, issuance, application, and invoicing under any one or more invoices issued thereafter in accordance with the updated GEP Metrics Document. For purposes of the GEP, a copy of this Amendment shall serve as a waiver letter signed by Contractor and Customer.

9. LSMS PLANNING ASSISTANCE — ADDITION OF NEW ARTICLE 36 TO MASTER AGREEMENT

The Master Agreement is hereby amended as of the Amendment Effective Date by the addition of Article 36, which will read in its entirety as follows:

ARTICLE 36 — LSMS PLANNING ASSISTANCE

On a monthly basis, beginning in March 2009, and at no cost to Customer or any Users, Contractor shall provide to Customer a report (the “Capacity Report”) setting forth the following information in the Service Area:

- Total number of Subscription Version (SV) records for non-EDR and EDR-capable (carrier) databases.
- SV forecast for 24 calendar months forward, utilizing extrapolation of trends and anticipated projects.

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