June 12, 2009

Ex Parte

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

Re: 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 Management; Renewed Request for Interim Standstill Order; and Request that NANC Resolve Dispute Concerning Necessity of Adding Certain URI Codes for the Completion of Telephone Calls, WCB Docket No. 07-149

Dear Ms. Dortch:

On June 11, 2009, Richard Jacowleff of Telcordia Technologies, Inc. ("Telcordia"), Linda Coffin of Wiltshire & Grannis LLP, and I met separately with Jennifer Schneider, Legal Adviser to Acting Chairman Copps; Mark Stone, Acting Legal Adviser to Commissioner Adelstein; Nick Alexander, Legal Adviser to Commissioner McDowell; and met together with Julie Veach, Acting Chief, Wireline Competition Bureau, Ann Stevens, Deputy Chief, Competition Policy Division, and Sanford Williams and Randy Clark, both of the Wireline Competition Bureau. We discussed the issues expressed in our pending petitions and standstill request. In addition, we provided the attached document summarizing Telcordia’s pending requests before the Commission and NANC and providing additional background on the series of negotiations leading to Amendment 70 along with graphic demonstrations of how the pricing structure of Amendment 70 effectively forecloses competition.1 In addition, we provided copies of Telcordia’s pending petition and its request that the Bureau exercise its authority to take immediate action submitted earlier in this docket, along with copies of the letter to

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1 See Attachment 1.
NANC invoking its dispute resolution procedures, also attached. We urged that the Commission or Bureau:

(1) Immediately grant Telcordia’s request for a standstill order (filed May 22, 2009) with respect to commercial implementation of the NANC Change Orders 429, 430, and 435 until, at a minimum, the NANC has considered the pending dispute filed by Telcordia with respect to these change orders, the NANC has provided a recommended decision to the Chief to the Bureau, and the Bureau or Commission have issued a final order adjudicating the dispute, or the NANC recommended decision has been deemed adopted by the Bureau pursuant to 47 C.F.R. § 52.25(b)(3); and

(2) Issue a public notice seeking comment on Telcordia’s pending petition (filed May 20, 2009) asking the Commission to reform or strike Amendment 70 to the agreement between NeuStar, Inc. (“NeuStar”) and the North American Portability Management LLC (“NAPM” or “the LLC”), and to institute a competitive bidding process.

Request for Interim Standstill Order

As noted in the standstill request, the Commission should not allow NeuStar and NAPM to make the installation of new URI codes in the NPAC through Change Orders 429, 430 and 435 a fait accompli before the legality of the change orders authorizing those codes has been reviewed. These change orders were adopted by NAPM on or about May 20, 2009. Telcordia immediately – on May 22, 2009 – filed a request for a standstill order with respect to implementation of those change orders pending the adjudication of a formal dispute to be filed with NANC, and then – on May 26, 2009 – filed a formal dispute with NANC disputing the legal basis for including those URI fields in the NPAC without a finding by NANC that the specific URI fields are “necessary to route telephone calls to the appropriate telecommunications carriers.” As Telcordia set forth in its May 22 standstill request:

- There is substantial likelihood of the unlawfulness of Change Orders 429, 430 and 435, as incorporated into Amendment 72 to the NPAC agreement;
- Third parties will incur substantial sunk implementation costs in the absence of a standstill order;
- There is no substantial offsetting benefit to proceeding with implementation during the NPAC dispute resolution process;
- There are definitive administrative processes available to the Commission.

3 47 C.F.R. § 52.25(f).
Nonetheless, NeuStar is racing to implement the change orders and to put them into commercial operation before any government authority can intervene to stop them. On May 26, NeuStar announced via e-mail (attached) an accelerated “rollout schedule” to move the commercial implementation of those change orders.\(^4\) The schedule NeuStar has laid out is as follows:

- June 15, 2009 – Industry Test Environment
- June 28, 2009 – Southeast Region
- July 12, 2009 – Mid-Atlantic, Midwest, and Northeast Regions
- July 19, 2009 – Southwest, West Coast, and Western Regions and the SOW 52 Testbed

The Local Service Management Systems and all other downstream systems used by all service providers will have to be modified if they wish to use these fields, as well as other downstream systems. Unless these changes are made, no one other than a NeuStar affiliate will be able to use the information in these fields. As noted at an LNPA Working Group meeting that also occurred yesterday, no local systems vendor will be able to meet this rushed deployment schedule.

NeuStar’s announcement of this accelerated schedule is premature and is unfairly designed to favor NeuStar as a supplier of downstream database services and a NeuStar affiliate as a user of the information in these fields.\(^5\) NeuStar will be able to get its products on the market faster than competing downstream providers. The Commission has a long history of protecting competition from this form of monopoly leveraging. For example, Section 251(c)(5) of the Communications Act requires incumbent local exchange carriers to provide notice of network changes, and the Commission’s rules implementing that section require the incumbent LECs to provide notice of network changes. The Commission’s rules preclude the incumbent LEC from sharing this information with its affiliates prior to giving public notice of planned network changes. 47 C.F.R. § 51.325(c).

As described more fully in Telcordia’s letter to the Bureau, allowing NeuStar to steamroll over the Commission’s governance and administrative processes will cause irreversible harm to the industry that is required by Commission rules to fund number portability administration.\(^6\) NeuStar claims that the changes to the database would be easy for it to unwind.\(^7\) What NeuStar omits, however, is the extent to which third parties will be required to make substantial investments in modifying systems that support provision of number portability data, costs that will be sunk once incurred, and that

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\(^4\) See e-mail from Jessica Wagner, NeuStar, to NeuStar listserv (May 29, 2009, 3:25 PM) (Attachment 3).

\(^5\) Amendment 68 to the Master Agreement between NeuStar and NAPM allows NeuStar to be a user of the NPAC database.


\(^7\) See Letter from Jordan Goldstein, Vice President, Federal Regulatory, NeuStar, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-149 (filed May 19, 2009).
cannot be recovered or made useful if the inclusion of URIs is found to be unlawful. Unless the Bureau acts, the implementation of Amendment 72 and the associated change orders will become a fait accompli as NeuStar intends.

Moreover, as discussed in the Petition and the standstill request, adding these URI fields to the NPAC raises substantial policy issues, particularly when all parties other than NeuStar are effectively frozen out of providing NPAC services by Amendment 70. Amendment 70 will permit NeuStar to use the NPAC to cross-subsidize its entry into, and to attempt to monopolize, ENUM services, the provision of which is currently a competitive market. There is a clear recoupment opportunity here because once NeuStar establishes market power, network effects and scale economies will create high barriers to entry to any other entity re-entering the market to discipline a small, but significant, price increase.

Issuing a standstill order will allow NANC and the Bureau to consider and study whether the addition of these URI fields to the NPAC database is permissible under Commission rules. As set forth by Telcordia in its letter to NANC invoking its dispute resolution procedures, Section 52.25(f) permits inclusion in the NPAC database only of information “necessary to route telephone calls to the appropriate telecommunications carriers.” Whether information is “necessary” is a determination to be made in the first instance by NANC. NeuStar and NAPM have violated Commission rules by moving forward toward adding information to the NPAC absent a NANC determination of the “specific information necessary to provide number portability.”

**Petition to Reform or Strike Amendment 70 and to Institute Competitive Bidding for Number Portability Administration**

Concomitantly, the Commission should seek public comment on Telcordia’s petition with respect to Amendment 70, which presents broader policy issues concerning number portability administration. Like Amendment 57 before it, Amendment 70 is a bad deal for industry and consumers. Once again eschewing competition, the NAPM has locked in payments to NeuStar through 2015 that are at least $500 million too high, and has also locked out any prospect of savings through competition. NAPM has far exceeded its lawful authority, exercising “inherently governmental” authority to decide the structure of the NPAC industry and whether and when to permit competition or competitive bidding, without any review or approval by the FCC. NAPM’s actions violate both the Competition in Contracting Act and President Obama’s federal...

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8 See NANC Dispute Resolution Letter.
9 47 C.F.R. § 52.25(f).
10 Id.
12 See 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 Management, WC Docket No. 07-149 (filed May 20, 2009).
procurement directive,\textsuperscript{14} as well as the Communications Act of 1934, as amended. Moreover, NAPM and NeuStar thumb their nose at and attempt to further frustrate government oversight and consideration of policy issues by including an “all or nothing” inseverability clause that would cause Amendment 70 to be deemed void in its entirety if any part of it is found impermissible by the Commission.

The Commission’s authority under the Communications Act and administrative law to modify or revoke contracts that are contrary to the public interest and cause harm to competition was affirmed by the D.C. Circuit in its recent opinion concerning exclusive contracts between cable companies and owners of multi-unit developments.\textsuperscript{15} There is no longer any question that the FCC has the authority to set aside the NAPM-NeuStar contract, or any portion thereof, if it finds the contract to be unjust, unreasonable, or otherwise unlawful.

Number portability was mandated by the Telecommunications Act of 1996 to promote competition and to ensure that competitors were not locked out of the market because of consumers’ reluctance to change phone numbers. Thousands of carriers that are not members of NAPM are required to pay FCC-mandated local number portability administration fees, and thus are directly affected by NAPM’s actions here. One way or another these fees eventually find their way to consumers. A bad number portability administration contract affects more parties than just those that formed the contracts in question. Administration of a database intended to promote competition has itself become an anticompetitive monopoly, entrenched for years and now on the cusp of being extended into the IP space.

\textsuperscript{14} Memorandum for the Heads of Executive Departments and Agencies, Subject: Government Contracting (March 4, 2009).
\textsuperscript{15} \textit{NCTA v. FCC}, No. 08-1016 (D.C. Cir. May 26, 2009).
The solution is to return to competition, just as the 1996 Act provides for every telecommunications service. Telcordia has asked that the Commission immediately begin a competitive bidding process for a multivendor NPAC administration system, upon completion of requirements development. The Commission must act to reassert oversight and control over number portability management, end NAPM’s interim designation as the manager of contracts governing NPAC administration, and resume direct authority over NPAC procurement.

Sincerely,

John T. Nakahata
Counsel to Telcordia Technologies, Inc.

cc: Nick Alexander
Randy Clark
Jennifer Schneider
Ann Stevens
Mark Stone
Julie Veach
Sanford Williams