

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Petition of Telcordia Technologies, Inc.)	
To Reform or Strike Amendment 70, To)	WC Docket No. 09-109
Institute a Competitive Bidding for Number)	
Portability Administration, and To End the)	
LLC's Interim Role in Number Portability)	
Administration Contract Management)	
)	
Telephone Number Portability)	CC Docket No. 95-116

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION® AND THE UNITED STATES TELECOM ASSOCIATION

CTIA – THE WIRELESS ASSOCIATION ®
Michael F. Altschul
Senior Vice President & General Counsel
CTIA – The Wireless Association ®
1400 16th Street, NW, Suite 600
Washington, D.C. 20036
202-785-0081

UNITED STATES TELECOM ASSOCIATION
Jonathan B. Banks
Senior Vice President, Law & Policy
USTelecom
607 14th Street, N.W.
Suite 400
Washington, DC 20005
202-326-7272

July 25, 2014

TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY	1
II.	ARGUMENT	3
	A. The Process Used to Identify and Recommend the Next LNPA Has Been Fair, Open, Transparent and Endorsed by the Prospective Vendors	3
	B. The NANC’s Recommendation Was Comprehensive and Well Documented, and Was Adopted With Overwhelming Support from All Participants.....	10
	C. Adoption of the NANC’s Recommendation Would Produce Significant Savings to Consumers and Industry.....	18
	D. Delay or Departure from Established Procedures Is Not in the Public Interest, and Could Jeopardize Participation in Federal Advisory Committees and Sound Competitive Bidding Processes	20
III.	CONCLUSION.....	23

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of Telcordia Technologies, Inc.)	
To Reform or Strike Amendment 70, To)	WC Docket No. 09-109
Institute a Competitive Bidding for Number)	
Portability Administration, and To End the)	
LLC’s Interim Role in Number Portability)	
Administration Contract Management)	
)	
Telephone Number Portability)	CC Docket No. 95-116

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION® AND THE UNITED STATES TELECOM ASSOCIATION

CTIA – The Wireless Association® (“CTIA”) and the United States Telecom Association (“USTelecom”) submit these Comments in response to the Wireline Competition Bureau’s June 9, 2014 *Public Notice* seeking comments on the recommendation of the North American Numbering Council (“NANC”) regarding selection of the next Local Number Portability Administrator (“LNPA”).¹

I. INTRODUCTION AND SUMMARY

The process for selecting the next LNPA (when incumbent Neustar’s contract expires in June 2015) has been long in the making. It began over five years ago with the NAPM LLC’s establishment of a Future of NPAC subcommittee. The Commission became deeply involved in the process starting in early 2011, upon the submission of a joint proposal to the Commission from the NANC and NAPM—two expert organizations, with dedicated working groups

¹ *Public Notice*, DA 14-794 (rel. June 9, 2014).

specializing in LNPA issues, that represent a broad spectrum of stakeholders. Under the careful stewardship of the Wireline Competition Bureau, the process used to identify and recommend the next LNPA has been fair, transparent, and the subject of overwhelming stakeholder support (including by the prospective vendors themselves). The governing procedures and vendor selection documents have been subjected to multiple rounds of public comment and have generated a voluminous record. In short, from the beginning to date, the entire process has been conducted with extraordinary care, fairness, openness, and robust public participation.

It is critical that this process remain on track. The selection of the next LNPA is a hugely consequential decision not only for the industry, but also for the consumers who ultimately pay the hundreds of millions of dollars per year that this service currently costs. In recommending Telcordia as the successor to the incumbent administrator when its contract expires in June 2015, the NANC (in close collaboration with the NAPM) undertook a painstakingly diligent and comprehensive review. Particularly important to CTIA and USTelecom members, the NANC's recommendation—unanimously adopted (with only one abstention)—will bring massive cost savings to consumers. Under fee increases and escalation provisions in the current LNPA contract, the costs to industry and ultimately the public have dramatically escalated in each of the past five years, and they will increase at a similar pace in the first half of 2015 before the current contract expires. Adoption of the NANC recommendation holds the promise of drastically reducing these costs.

Introducing further delay at this time makes no sense either as a legal or policy matter. As we explain below, the extraordinary opportunity for public participation in the process to date (culminating in the Commission's recent *Public Notice* inviting comment on the NANC recommendation) more than adequately satisfies the requirements of the Administrative

Procedure Act. And delaying the selection process now (for example, by reopening bidding) could have serious adverse consequences. Any extension of the present contract past its current expiration date of June 30, 2015 will automatically trigger an escalation of fees that will be directly funded by the industry – but ultimately borne by consumers. To make matters worse, delay could undermine industry confidence in the integrity of the competitive bidding process in this proceeding and others. And it could damage the federal advisory-committee process by sending the counter-productive message to industry participants who labored diligently for many years that their efforts may be wasted. In sum, any delay at this critical stage in the process would be manifestly contrary to the public interest.

The Commission should promptly conclude the LNPA selection process and move forward with the implementation of the next LNPA contract to ensure that effective and efficient number porting remains available to the industry and consumers.

II. ARGUMENT

A. The Process Used to Identify and Recommend the Next LNPA Has Been Fair, Open, Transparent and Endorsed by the Prospective Vendors

1. The Selection Process and Key Documentation Have All Been Subject to Extraordinary Stakeholder Input, Public Review and Comment

Since its inception almost five years ago, the extraordinarily labor-intensive process of selecting a new LNPA (upon the expiration of the current contract in June 2015) has been conducted in an open and fair manner, with robust public participation.

In 2009, the NAPM LLC (“NAPM”), a non-profit industry consortium established to contract for and manage the LNPA, established the Future of NPAC (“FoNPAC”) Subcommittee to consider related issues and develop a timeframe for a vendor selection process. The project gained momentum and became the subject of FCC proceedings in February 2011, when the NANC and NAPM presented to the FCC a “Consensus Proposal” for the LNPA selection

process.² In March 2011, the Wireline Competition Bureau (“Bureau”) delegated authority to the NANC (working in conjunction with the NAPM) to implement a process for selecting the next LNPA.³ Throughout the process, the Bureau has diligently piloted this proceeding to assure openness, robust public participation, overwhelming consensus on selection criteria, and other important protections to safeguard the integrity of the entire selection process. The Bureau has consistently adhered to its commitment to ensure “that the process runs efficiently,” is “impartial to all vendors and segments of the industry,”⁴ and is “open and transparent.”⁵

The Bureau specifically considered transparency, robust participation, and fairness when it delegated authority to the NANC/NAPM to implement a selection process. In its March 2011 Order, the Bureau directed both entities to develop a comprehensive selection process to facilitate competitive bids, and to provide information to the Bureau about such processes in order to “ensure efficiency and fairness.”⁶ The Bureau also established certain procedural parameters for NANC/NAPM, including: (1) providing a timeline for the LNPA selection process; (2) informing the Bureau of its progress; (3) releasing procurement documents (after the

² 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; Telephone Number Portability*, Order and Request for Comment, WC Docket No. 09-109, CC Docket No. 95-116, 26 FCC Rcd 3685, 3687 (2011) (“March 2011 Order”).

³ See generally March 2011 Order.

⁴ *Id.* ¶ 8.

⁵ *In the Matter of Petition of Telcordia Technologies Inc. to Reform or Strike Amendment 70, to Institute Competitive Bidding for Number Portability Administration and to End the NAPM LLC’s Interim Role in Number Portability Administration Contract; Telephone Number Portability*, Order, WC Docket No. 09-109, CC Docket No. 95-116, 26 FCC Rcd 6839, ¶ 13 (2011) (“May 2011 Order”).

⁶ March 2011 Order ¶ 8. See also Letter from Julie A. Veach, Chief, Wireline Competition Bureau to The Honorable Betty Ann Kane, Chair North American Numbering Council, WC Docket 09-109, CC Docket 95-116, DA 14-179, 29 FCC Rcd 1279 (Feb. 11, 2014) (“WCB Feb. 11 *Ex Parte* Letter”) (citing March 2011 Order and reiterating Bureau’s commitment to “fair and impartial LNPA selection process”).

Bureau's authorization); and (4) submitting a ranked evaluation of bidders and a recommendation to the Bureau at the end of the evaluation process.⁷ As a result, interested parties have been afforded numerous opportunities to participate in and comment on the voluminous record amassed in this proceeding—all to ensure a fair and considered selection of the next LNPA.

The process has been open from the start. As early as 2010, when the NAPM announced its intention to issue an RFP, interested parties have been informed of the issue at stake in this proceeding (who would serve as the new vendor of Local Numbering Portability), as well as the overarching process to select the LNPA upon expiration of the current 7-year contract in June 2015.⁸ At each subsequent stage of the process, the FCC published the selection procedures and procurement documents for public comment. And at each stage, service providers, state regulators, consumer advocates, and industry organizations filed comments contributing to the deliberative process.⁹ Indeed, both the selection process itself and the key documents—including the draft Request for Proposal (“RFP”) documents, final RFPs, Technical Requirement

⁷ May 2011 Order ¶ 17.

⁸ See, e.g., *NAPM LLC Announces Request for Information from Vendors on Upcoming Request for Proposals for LNP Database Platforms and Services*, Public Notice, DA 10-1800, 25 FCC Rcd 13379 (2010) (“The Commission encourages full competition in the RFP process and issues this Public Notice to ensure that interested parties re aware of the upcoming process.”).

⁹ See, e.g., Joint Comments of AT&T, CTIA, CenturyLink, Level 3, Sprint, T-Mobile, OPASTCO, Verizon, USTelecom, and XO Communications, CC Docket No. 95-116, WC Docket Nos. 07-149, 09-109 (filed Sept. 13, 2012); Comments of Massachusetts Department of Telecommunications and Cable, WC Docket No. 09-109, and CC Docket No. 95-116 (filed Mar. 23, 2011); Comments of Connecticut Department of Public Utility Control, WC Docket No. 09-109 and CC Docket No. 95-116 (filed Mar. 28, 2011); and Comments of Idaho Public Utilities Commission, CC Docket No. 5-116, WC Docket No. 07-149, 09-109 (filed Mar. 22, 2011).

Documents and Vendor Qualification Surveys¹⁰—have all been subject to multiple rounds of public notice and comment.

At the conclusion of that elaborate process, these documents were released to the public, with an invitation to interested parties to submit competitive bids in response to the RFP.¹¹ Indeed, current LNPA incumbent Neustar has acknowledged that the “RFP process include[d] appropriate opportunities for input by all constituencies”¹² and had “garnered virtually unanimous support: every segment of the industry, state regulators, and consumers” and on that basis urged the Commission to allow the RFP process to “move forward.”¹³

If that were not enough, on June 9, 2014, the Commission sought additional public input by inviting comments on the NANC’s recommendation that Telcordia Technologies, Inc. (“Telcordia”) serve as LNPA when Neustar’s contract expires on June 30, 2015.¹⁴

The voluminous *ex parte* record in this proceeding further confirms the level of robust public participation in this proceeding. Since January of 2010 more than 200 separate *ex parte* communications have been filed in both dockets for this proceeding, representing a broad array of commenters, including service providers (wireline and wireless providers, cable operators, and specialized service providers to name a few), trade associations, state public service commissions, and public interest organizations. Supplementing that voluminous set of

¹⁰ *Wireline Competition Bureau Seeks Comment on Procurement Documents for the Local Number Portability (LNP) Administration Contract*, Public Notice, DA 12-1333, 27 FCC Rcd 11771 (WCB 2012).

¹¹ *Wireline Competition Bureau Announces Release of Procurement Documents for the Local Number Portability (LNP) Administration Contract*, Public Notice, DA 13-154, 28 FCC Rcd 1003 (WCB 2013).

¹² *Ex Parte* Letter from Aaron Panner, Counsel to Neustar Inc., to Marlene Dortch, Secretary, FCC CC Docket No. 95-116, WC Docket Nos. 07-149, 09-109, Attachment at 3 (Mar. 9, 2012).

¹³ Letter from Aaron M. Panner, Counsel to Neustar, Inc., to Marlene H. Dortch, Secretary, FCC CC Docket No. 95-116, WC Docket Nos. 07-149, 09-109 (Jan. 11, 2013).

¹⁴ *Public Notice*, DA 14-794 (rel. June 9, 2014).

comments are the numerous filings by each of the bidding parties in this proceeding, which have addressed myriad issues raised during the selection process. While some information has been designated confidential in this proceeding (as is appropriate in any proceeding involving certain sensitive and proprietary financial and other information), a voluminous record remains fully accessible to the public and all interested parties. It reflects the broad base of participation in this proceeding, and is clear evidence that the Bureau has conducted this process in a fair, open and transparent manner.

2. Questions and Concerns Regarding the Process Leading to the Submission of Best and Final Offers (BAFO) Arose Only After Those BAFOs Were Submitted on September 18, 2013

Throughout the period leading up to the submission of each competing bidder's "best and final offer" ("BAFO"), no concerns were raised about the fairness or transparency of the process. To the contrary, both competing bidders generally endorsed the framework and processes that were employed. For example, Neustar recognized that "the industry has the correct incentives to design and implement the RFP process to ensure that the LNP Administrator continues to deliver service of the highest quality and value."¹⁵ And it recognized that "[t]he best and most legally defensible way for the Commission to proceed is to approve the RFP Documents as drafted and to allow the process to move forward."¹⁶

Only *after* the competing bidders submitted their BAFOs did Neustar start to raise questions about the integrity of the process. If Neustar believed that there were legitimate concerns about the process, however, it could (and should) have raised those concerns *before*—

¹⁵ Letter from Aaron M. Panner, Counsel to Neustar, Inc., to Marlene H. Dortch, Secretary, FCC CC Docket No. 95-116, WC Docket Nos. 07-149, 09-109 (Jan. 11, 2013).

¹⁶ *Id.*

not after—submission of the BAFOs. In any event, as discussed below, these newfound concerns lack merit.

3. There Is No Need for a New NPRM to Further Develop the Record

Particularly in light of the elaborate and painstaking process described above, the Commission is not required to issue another NPRM formally seeking comment on the selection process (including seeking comment on the NANC’s recommendation), nor would such a requirement make any sense as a policy matter.

It is settled law that the Administrative Procedure Act does not require the Commission to engage in notice-and-comment rulemaking when undertaking informal adjudication like the administrator-selection at issue here.¹⁷ The Commission’s ultimate selection of an LNPA will “reflect a highly fact-specific, case-by-case style of adjudication.”¹⁸ Indeed, this proceeding involves “a classic case of agency adjudication, a case that involves decisionmaking concerning specific persons, based on a determination of particular facts and the application of general principles to those facts.”¹⁹ As a result, the APA’s notice-and-comment requirements simply do not apply.

Nor is there any merit to the contention that the Commission must engage in formal rulemaking to select an LNPA because the agency made its initial vendor designations—though

¹⁷ See, e.g., *Blanca Tel. Co. v. FCC*, 743 F.3d 860, 867 (D.C. Cir. 2014) (“[A]s we have repeatedly held, adjudicatory decisions are not subject to the APA’s notice-and-comment requirements.”) (citing *Cassell v. FCC*, 154 F.3d 478, 485-86 (D.C. Cir. 1998), *petition for cert. filed* (U.S. July 17, 2014) (No. 14-64)); see also Brief for Federal Communications Commission in *Blanca Tel. Co. v. FCC*, No. 12-1365, at 34-35 (D.C. Cir.) (“FCC Brief”). As the FCC explained in its brief in *Blanca*, the APA imposes certain procedural requirements on formal trial-type adjudications generally “required to be determined on the record.” 5 U.S.C. § 554(a); see FCC Brief, at 35 n.35. The present selection proceeding, however, is clearly not a formal trial-like adjudication. See *Occidental Petro. Corp. v. SEC*, 873 F.2d 325 (D.C. Cir. 1989).

¹⁸ *Conference Grp., LLC v. FCC*, 720 F.3d 957, 965 (D.C. Cir. 2013) (quoting *AT&T Co. v. FCC*, 454 F.3d 329, 333 (D.C. Cir. 2006)).

¹⁹ *Harborlite Corp. v. ICC*, 613 F.2d 1088, 1093 n.11 (D.C. Cir. 1979) (emphasis added).

not all LNPA contract awards²⁰—pursuant to notice and comment procedures.²¹ Of course, the Commission may *choose* to comply with formal notice-and-comment procedures even when doing so is not required.²² And if it so chooses, that does not convert what is clearly an adjudicative decision into rulemaking.²³

Here, not only was there an extraordinary opportunity for public comment throughout the entire selection process, as detailed above; the Commission also issued a *Public Notice* expressly seeking comment on the NANC recommendation.²⁴ That notice (issued on June 9, 2014) left no doubt about the issue before the Commission (the selection of the LNPA and NANC’s recommended administrator); it expressly sought comment on the NANC’s recommendation; and it gave interested parties ample opportunity for input. Neither the APA nor sound policy demands any more.

²⁰ Neustar was awarded three of the LNPA contract awards without any notice and comment. *See Telephone Number Portability*, Second Memorandum and Opinion and Order on Reconsideration, FCC 98-275, 13 FCC Rcd 21,204, 21,208-09 ¶¶ 7-9 (1998) (approving, without notice and comment, NANC recommendation that Neustar be awarded LNPA in Southwest, Western, and West Coast regions).

²¹ *See Ex Parte* Letter from Aaron M. Panner, Counsel for Neustar, to Marlene Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket Nos. 07-149 & 09-109 (filed May 6, 2014) at 4-5 (contending that initial designations were made by “legislative rule,” and such a rule can only be modified by subsequent rulemaking).

²² *See Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 524 (1978) (“Agencies are free to grant additional procedural rights in the exercise of their discretion.”).

²³ *See, e.g., Goodman v. FCC*, 182 F.3d 987 (D.C. Cir. 1999) (rejecting argument that order was rulemaking because, *inter alia*, it was subject to notice and comment and was published in the Federal Register under the label “Final Rules”).

²⁴ In *City of Arlington v. FCC*, 668 F.3d 229, 243-44 (5th Cir. 2012), *aff’d*, 133 S. Ct. 1863 (2013), the court of appeals held that, even if the Commission erred in not seeking formal comment in an NPRM on a petition for a declaratory ruling, any such error was harmless—in large part due to the agency’s decision to seek comment in a Public Notice. Here, there is no question that a formal NPRM is not mandated by the APA; the *Public Notice* simply provided additional transparency and invited further public participation well beyond what the law requires.

B. The NANC's Recommendation Was Comprehensive and Well Documented, and Was Adopted With Overwhelming Support from All Participants

It is evident from the voluminous record in this proceeding that the near-unanimous recommendation of a vendor to serve as the next LNPA was the product of an extraordinarily careful review of the evidence and was firmly anchored in the record. The recommendation was the product of nearly five years of work by the NANC and NAPM and their respective committees (the NANC's LNPA Selection Working Group and the NAPM's FoNPAC).²⁵

Consistent with the Bureau's orders,²⁶ the recommendation was adopted first by the NAPM's FoNPAC following an exhaustive review of all the bid documents and materials, day-long interviews with each of the two prospective vendors, and receipt and review of the applicants' Best and Final Offers submitted September 18, 2013. Under the same Bureau directives,²⁷ this recommendation was then approved by the members of the NAPM, by the NANC's LNPA Selection Working Group, and finally by the full NANC, by unanimous vote with one abstention. That recommendation was submitted formally to the Commission on April 24, 2014.²⁸ These bodies not only possess unique experience and expertise regarding the LNPA and the vendor selection process,²⁹ but also represent the broadest and most inclusive cross-section of industry stakeholders.

²⁵ See, e.g., May 2011 Order, DA 11-883 for a detailed description of the roles of the NANC, NAPM, the Selection Working Group, and the FoNPAC.

²⁶ See *id.* at 6845-6847.

²⁷ *Id.* at 6843 ¶ 17, 6846.

²⁸ *Public Notice* at p. 1, citing NANC April 24, 2014 *Ex Parte* Letter.

²⁹ See May 2011 Order; March 2011 Order.

1. The NANC and NAPM—And Their Specialized Working Groups—Are Experienced and Neutral Organizations That Represent a Broad and Expert Cross-Section of Industry Stakeholders and Interests

The NANC and NAPM have functioned as broadly based representatives of governmental, industry and consumer stakeholders since the dawn of local number portability in the mid-1990s, and their joint Consensus Proposal for the LNPA selection process (presented to the Commission in February 2011) reflected their broad constituencies.³⁰

The Commission established the NANC as an advisory committee in 1995 to apply the technical and operational expertise of its members to reach consensus-based recommendations to foster “efficient and *impartial* numbering administration.”³¹ The NANC’s members represent the broadest cross-section of the U.S. telecommunications industry, with representatives from local exchange carriers, interexchange carriers, wireless providers, manufacturers, state regulators, consumer interests, and telecommunications industry associations.³² At the Commission’s direction, the NANC initially constituted its LNPA Selection Working Group in 1997 to oversee the first LNPA selection process; at the Commission’s direction, the NANC re-constituted the Working Group in 2011 to oversee the present LNPA selection process.³³ Subject to confidentiality protections and conflict-of-interest rules, membership of the LNPA Selection Working Group was open to any NANC Member, NANC alternate, or technical

³⁰ That Consensus Proposal was subjected to public comment by the Wireline Bureau, and subsequently was revised and adopted by the Bureau in May 2011. *See* May 2011 Order.

³¹ *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8401 (1996), *citing Charter of the North American Numbering Council*, approved Oct. 5, 1995 (emphasis added). *See also* May 2011 Order ¶ 3 & nn.4, 5.

³² *See* NANC Membership Directory, *available at* <http://www.fcc.gov/encyclopedia/nanc-membership-directory>.

The NANC’s 23 voting members include several state public utility commissioners, companies such as AT&T, Verizon, Vonage, Comcast, Sprint, XO Communications, T-Mobile, SMS/800 Inc. Cox Communications, Bandwidth.com Inc. CenturyLink and Level 3, and industry and consumer associations including CTIA, USTelecom, NASUCA, CompTel, and NCTA.

³³ May 2011 Order, 26 FCC Rcd at 6845.

personnel of a NANC member company, association or governmental entity. Indeed, the Commission expressly required that the Selection Working Group reflect a diverse and fair balance of the NANC's constituencies.³⁴

The NAPM and its specialized FoNPAC Subcommittee similarly reflect a balanced cross-section of industry stakeholders. The NAPM, a non-profit industry consortium, has existed in its present form since 1999,³⁵ and is open to all telecommunications carriers and associations of telecommunications carriers that port or pool telephone numbers.³⁶ Its membership includes ILECs, CLECs, cable MSOs, IXCs and wireless carriers.³⁷ As required by the Commission, the NAPM's FoNPAC Subcommittee was tasked with collaborating with the NANC's Selection Working Group to develop a Request for Information ("RFI") and ultimately the RFP for the LNPA contract, administer the selection process, review and evaluate vendor proposals, and recommend a vendor to the Selection Working Group.

Beyond the alphabet soup of acronyms and various working groups, a critical hallmark of the present LNPA selection process has been the diverse, inclusive and broad-based nature of the expert bodies that have arrived at the near-unanimous LNPA vendor recommendation presently before the Commission.³⁸ All pertinent industry and governmental sectors and stakeholders were

³⁴ *Id.* at 6842 ¶ 12. At present, the Group's tri-chairs consist of representatives of the Massachusetts DTC, XO Communications, and Verizon; its other seven member entities are AT&T, CenturyLink, Comcast, Cox, T-Mobile, USTelecom, and the District of Columbia Public Service Commission.

³⁵ *Id.* at 6842 ¶ 4 & n.9.

³⁶ See <https://www.napmlc.org/pages/MembershipInfo.aspx>.

³⁷ See NAPM LLC membership roster, *available at* https://www.napmlc.org/pages/openmeeting/openmeeting_minutes.aspx.

³⁸ For example, in addition to the diverse membership of the NANC, the co-chairs of the NAPM consist of an ILEC and a cable operator, and the tri-chairs of the Selection Working Group are an ILEC, a CLEC, and a state utility commissioner. Indeed, other than the collective subject matter expertise and extraordinary time commitments offered by the members of these organizations,

welcome to participate—and did participate. The only limitation on their participation was their own interest and engagement.

2. The NANC and NAPM Have Labored Diligently For Several Years on All Aspects of the LNPA Selection Process

As shown above and as chronicled in the many Commission Orders, Public Notices, and myriad other documents in the record, the members of the NANC and NAPM and their working groups have applied intense and assiduous scrutiny to the current LNPA selection process for several years. Including their oversight and administration of the initial LNPA vendor selection and the current NPAC/SMS contract, they have concentrated their energies on the LNPA process for more than fifteen years.

Particularly since 2011, the labors of these four industry groups have been nothing less than extraordinary. It was the NANC and NAPM that initiated the current process by forging and presenting their Consensus Proposal to the Commission in February 2011.³⁹ Then, following the Commission’s May 2011 approval of a revised Consensus Proposal reflecting public comment, and consistent with the Commission’s directive,⁴⁰ the NANC promptly reconstituted the Selection Working Group “to oversee the selection process of the LNPA(s),” while the NAPM authorized its FoNPAC to “administer the selection process of the LNPA(s)” pursuant to a 19-point Commission mandate.⁴¹ The sheer number of tasks undertaken is a testament to the remarkably careful process followed in this proceeding to date:

- (1) the FoNPAC developed a draft RFI;

their only common denominator in these proceedings has been the apparent virtual unanimity of their recommendations.

³⁹ See March 2011 Order at n.1 and Attachment A.

⁴⁰ May 2011 Order ¶ 6 and Attachment A.

⁴¹ *Id.* at Attachment A, 26 FCC Rcd at 6846-47.

- (2) the Selection Working Group reviewed the draft RFI, suggested revisions, and collaborated with the FoNPAC on a final draft;
- (3) the Selection Working Group next submitted a status report and approved RFI to the NANC Chair;
- (4) the NANC Chair submitted the RFI to the Commission and the status report to the NANC membership;
- (5) the NAPM activated software and invited responses to the RFI;
- (6) the FoNPAC reviewed and analyzed responses to the RFI, and developed outlines for the RFP and the Technical Requirements Document for the Selection Working Group;
- (7) the Selection Working Group then reviewed and revised the outlines, and collaborated with the FoNPAC on related issues;
- (8) the FoNPAC drafted the RFP, Technical Requirements Document and Vendor Qualification Surveys for submission to the Selection Working Group;
- (9) the Selection Working Group and FoNPAC collaborated on final versions of these documents;
- (10) the Selection Working Group prepared a status report and submitted the report, the RFP, Technical Requirements Document and Vendor Qualification Surveys to the NANC Chair;
- (11) the NANC Chair submitted these documents to the Commission and the status report to the NANC;
- (12) the Commission sought public comment on the proposed documents;⁴²
- (13) at the Commission's direction following public input, the FoNPAC and Selection Working Group finalized the documents;
- (14) after the Commission's release of the final documents,⁴³ the NAPM opened a portal to receive vendor responses;
- (15) the FoNPAC reviewed and evaluated vendor responses;
- (16) the FoNPAC and the Selection Working Group consulted and developed and issued a request for Best and Final Offers ("BAFOs");
- (17) the FoNPAC reviewed and evaluated the BAFOs and other bid documents;

⁴² *Public Notice*, DA 12-1333, 27 FCC Rcd 11771 (WCB 2012).

⁴³ *Public Notice*, DA 13-154, rel. Feb. 5, 2013.

- (18) the FoNPAC deliberated, voted on, and prepared a vendor selection recommendation to the Selection Working Group;
- (19) the Selection Working Group reviewed and evaluated the FoNPAC recommendation;
- (20) the NANC and the NAPM dealt with the unsolicited further BAFO proffered by a vendor, consulted with the Commission and counsel on its proper disposition, and directed the FoNPAC and Selection Working Group accordingly;
- (21) the Selection Working Group deliberated and voted on the FoNPAC's vendor recommendation, and submitted it to the NANC;
- (22) the NANC, employing a consensus process, deliberated over the FoNPAC recommendation;
- (23) the NANC submitted its recommendation to the Commission; and
- (24) pursuant to the Bureau's directive,⁴⁴ the NANC, NAPM and Selection Working Group also conducted investigations and prepared detailed reports for the Commission refuting claims of potential unfairness, influence, and irregularities in the process.

These Herculean efforts required not only enormous expenditures of time and resources, but also technical, engineering, operational and other substantive expertise. At every step of this multi-year process, including hundreds of meetings and thousands of hours of review, analysis, evaluation and consultation, the NANC and NAPM and their expert working groups have indisputably conducted themselves with the highest levels of competence and diligence. To CTIA's and USTelecom's knowledge, no party has suggested otherwise.

Accordingly, the Bureau and the Commission should accord appropriate respect to these entities' expertise and procedures, and their recommendations should be given due deference.

3. The NANC's Virtually Unanimous Support for the Recommendation Reflects Stakeholders' Broad Support

As the Commission's recent *Public Notice* reported, "[t]he NANC recommended the selection of Telcordia Technologies, Inc. d/b/a/ iconectiv (Telcordia), as the sole LNPA. The

⁴⁴ WCB Feb. 11 *Ex Parte* Letter, 29 FCC Rcd 1279 (2014).

NANC members unanimously reached this recommendation, with one abstention vote.”⁴⁵ There is no suggestion in the public record that the recommendations of the FoNPAC and Selection Working Group were anything other than fully consistent.

This overwhelming consensus speaks for itself: the NANC’s recommendation to the FCC reflected the support of virtually all concerned industry and public stakeholders, including local exchange carriers, interexchange carriers, wireless providers, manufacturers, state regulators, consumer interests, and telecommunications associations. To be sure, the Commission is not *bound by* the NANC’s recommendation. But in evaluating the recommendation, it is required to take account of the fact that it has the overwhelming support of those who will use and rely upon the LNPA and the NPAC/SMS over the life of the next LNPA contract and who undertook to contribute to the remarkably open vendor-selection process.⁴⁶

4. The Exhaustive Review By The NANC and NAPM and Their Expert Working Groups Has Fully Addressed Concerns About the Fairness of the Process and Vendor Compliance with Requirements of Neutral Administration of the NPAC/SMS Database

On February 11, 2014, in response to concerns expressed by various interests including both of the prospective LNPA vendors, the Chief of the Wireline Bureau directed the NANC to “include in its ultimate recommendation of a vendor or vendors its evaluation of . . . all claims of potential unfairness.”⁴⁷ The Bureau Chief added that she “fully expect[ed] the documentation and evaluation thereof to be comprehensive, detailed, demonstrably reliable, and based on verifiable information,” and specifically directed the NANC to “(1) include a detailed description

⁴⁵ *Public Notice* at 1.

⁴⁶ *See, e.g., Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983) (agency must “consider” any “important aspect of the problem,” and ensure that its explanation for its decision does not “run counter to the evidence”).

⁴⁷ WCB Feb. 11 *Ex Parte* Letter, 29 FCC Rcd 1279 (2014).

of the steps taken to review these concerns regarding the process, and (2) submit findings as to whether the process was conducted in a fair and impartial manner.”⁴⁸

In response, as the *Public Notice* notes, both the NAPM and the Selection Working Group undertook probing investigations and submitted detailed reports to the NANC, which were forwarded to the Commission (along with the NANC’s ultimate LNPA recommendation) on April 24, 2014.⁴⁹ As the *Public Notice* explains:

The NANC forwarded, along with its vendor recommendation, reports from the NANC’s LNPA Selection Working Group (SWG) and the North American Portability Management LLC’s (NAPM’s) Future of the Number Portability Administration Center (FoNPAC). . . . The NANC also forwarded investigative reports prepared by the NAPM and the SWG that responded to a . . . directive from the Bureau that the NANC include in its vendor recommendation an evaluation of filings in the record that questioned the fairness of the process. . . . In addition to these materials, the Bureau requested that the NAPM’s FoNPAC file the bid documents submitted by the vendors and transcripts of meetings between the FoNPAC and the vendors. Finally, as part of the bidding process, the vendors submitted opinion letters addressing the vendors’ compliance with the requirements for neutral administration of the local number portability database.⁵⁰

Those reports comprehensively address the concerns and allegations expressed by the parties. They provide detailed and in some instances hour-by-hour accounts of the processes that the NAPM, its FoNPAC and the Selection Working Group followed in conducting the vendor-selection process, including the problems and questions that arose during the process, such as the handling of a vendor’s unsolicited updated bid submission.

The reports also make abundantly clear that the NANC and NAPM and their working groups and committees conducted themselves properly—indeed, scrupulously—at every stage of the process, and in particular that they worked in consultation with and under the direction of the

⁴⁸ *Id.*

⁴⁹ See *Public Notice* at p. 1, citing NANC Apr. 24 *Ex Parte* Letter and accompanying NAPM and SWG Reports.

⁵⁰ *Public Notice* at pp. 1-2.

Commission to ensure and maintain the fairness of the vendor selection process. Similarly, the documents, opinion letters and supplemental information submitted at the Bureau's request show that the FoNPAC gave the prospective vendors multiple opportunities to provide inputs and express concerns throughout the process, including during day-long interviews with each applicant, and that it carefully evaluated all pertinent issues and concerns regarding the neutral administration of the NPAC/SMS database.

In short, the record shows clearly that the NANC and its Selection Working Group, and the NAPM and its FoNPAC, did their jobs competently, fairly, and in faithful execution of the Commission's directives at all times during this lengthy and difficult process. The record discloses no reason for the Commission to further prolong this proceeding before issuing a final decision on selection of a new LNP Administrator.

C. Adoption of the NANC's Recommendation Would Produce Significant Savings to Consumers and Industry

From the outset, the key objective in selecting an LNPA has been "to provide the neutral, technologically proficient, and cost-effective administrative services that are necessary for achieving the important pro-consumer and pro-competitive purposes of local number portability."⁵¹ To this end, the NANC, NAPM, their subcommittees and this Commission carefully crafted an RFP with the following weighted evaluation criteria: technical proficiency, management proficiency, and cost. The RFP stated: "The Technical and Management criteria when combined are significantly more important than the Cost criterion alone. If Respondents' Technical and Management merits are not significantly disparate, the Cost may become determinative."⁵²

⁵¹ March 2011 Order, NANC/NAPM Consensus Proposal, 26 FCC Rcd at 3693.

⁵² See RFP, § 14.1.1.

In light of this guiding principle of the selection process, the NANC’s unanimous recommendation obviously indicates that its members were well satisfied that the recommended vendor scored similarly or better than the other applicant on the technical proficiency and management proficiency criteria. That being the case, as the RFP anticipated, the cost criterion did indeed “become determinative.”

As CTIA, USTelecom and NCTA—all members of the NANC—have noted previously, the users of the NPAC/SMS LNP databases have experienced rapidly escalating assessments over the past decade; indeed, these costs have more than doubled since 2005. As we explained: “Our members – and ultimately all voice customers – are the ones paying this sizeable bill. The instant RFP was intended, in part, to reduce this amount significantly. . . [O]ur members are hoping to achieve material cost savings at that time, regardless of which vendor is selected.”⁵³ Neustar’s 2013 annual report confirms that under fee increases and escalation provisions in the current LNPA contract (due to expire in June 2015),⁵⁴ the costs to industry and ultimately the public—costs in the *hundreds of millions of dollars*—have risen dramatically in each of the past five years,⁵⁵ and they will increase again by a similar amount in the first half of 2015 before the existing LNPA contract expires. The industry overwhelmingly hopes that a new LNPA under the NANC’s vendor selection recommendation will drastically reduce these escalating costs.

⁵³ CTIA/USTelecom/NCTA *Ex Parte* letter in CC Docket No. 95-116 and WC Docket Nos. 07-149 & 09-109, dated June 3, 2014. *See also* Neustar Annual Report on SEC Form 10-K for Fiscal Year 2013 (“Neustar Annual Report”) at p. 9 (“our fees are billed to telecommunications service providers based on their allocable share of the total transaction charges. This allocable share is based on each respective telecommunications service provider’s share of the aggregate end-user services revenue of all U.S. telecommunications service providers, as determined by the FCC.”).

⁵⁴ Neustar Annual Report at p. 34 (“the annual fixed fee is subject to an annual price escalator of 6.5%.”).

⁵⁵ *Id.* at p. 58 (“The total amount of revenue derived under the Company’s contracts with NAPM . . . was approximately \$374.4 million, \$418.2 million and \$446.4 million for the years ended December 31, 2011, 2012 and 2013, respectively.”).

In short, the vendor selection process undertaken by the NANC and NAPM holds the promise of bringing massive cost savings to American telephone customers—a result, borne of the competitive bidding process ordered by the Commission, that indisputably would be in the public interest. While the Commission of course may consider other factors in making its final decision, an industry recommendation that could save the public hundreds of millions or billions of dollars over the next seven years (the duration of the contract) surely is an “important aspect of the problem”⁵⁶ that is due considerable weight.

D. Delay or Departure from Established Procedures Is Not in the Public Interest, and Could Jeopardize Participation in Federal Advisory Committees and Sound Competitive Bidding Processes

1. Reopening the Bid Process Will Delay Clear Cost Savings for the Industry and Consumers, While Benefitting Only the Incumbent Administrator

Further delays in the selection and implementation of the next LNPA would have significant adverse consequences for the industry and consumers. Specifically, delays in the process that could cause the current LNPA contract to remain in place beyond the June, 2015 transition period would require the payment of substantial additional fees to the incumbent. As discussed above, the current LNPA contract includes a price escalation clause (of 6.5% above a base amount of more than \$440 million);⁵⁷ thus, any extension of the current contract past the June, 2015 implementation deadline will automatically trigger that clause, bringing a windfall to the incumbent administrator on the order of *\$40 million per month*.⁵⁸ Those additional costs will be directly funded by the industry—but ultimately borne by consumers.

⁵⁶ *State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 43.

⁵⁷ See notes 54 & 55 (citing Neustar Annual Report for 2013).

⁵⁸ *Id.*

Ironically, the only entity that would clearly benefit from further delay is the one that has itself urged delay. The incumbent Administrator has asked the Commission to initiate lengthy new proceedings under the guise of procedural fairness.⁵⁹ But not only is there no basis in law or fact for that claim, granting an unjustified windfall to the incumbent at the expense of carriers and consumers is decisively contrary to the public interest.

2. Departing From Current Procedures At This Critical Juncture In The Process Would Upset Settled Expectations And May Cause Industry to Devote Fewer Resources to Participation in Federal Advisory Committee Processes

Any last-minute decision now to upset the governing procedures for the selection process (by, for example, inviting further bids) would have potentially disastrous consequences. As described above, a broad base of stakeholders, including NANC and NAPN members, have participated in the selection process to date based on the reasonable expectation that the process will proceed according to the ground rules adopted by the Commission in its March 2011 Order.⁶⁰ The CTIA and USTelecom member companies, along with the other NANC members, reasonably understood that their participation in the NANC review and recommendation process would be properly considered by the Commission, consistent with their role as participants in an “advisory” committee.

If the Commission were now to abruptly depart in any significant way from current procedures, initiate a new proceeding, or otherwise fail to duly consider the NANC’s recommendation at the eleventh hour, the time and resources that the advisory committee members devoted to the initial process may be for naught. That would undermine the integrity of the federal advisory committee process and send a dangerous signal to industry participants

⁵⁹ See Section A.3, *supra* (addressing Neustar’s arguments for formal NPRM).

⁶⁰ 26 FCC Rcd 3685, 3687 (2011).

that their time and resources devoted to participating on such committees may be wasted. And to compound the problem, it could cause advisory committee members to devote fewer resources, and less time, to future proceedings involving a federal advisory committee. Such a result would be a great disservice to industry and the agency, given the advisory committees' mission to be "fairly balanced in [] membership in terms of the points of view represented and the functions to be performed."⁶¹

3. Further Delay Could Undermine Industry Confidence in the Integrity of the Competitive Bidding Processes in This Proceeding and Others

Also at risk is the integrity of the Commission's competitive bidding process in this proceeding—and in future proceedings. Permitting additional bids now would imperil the integrity of the bidding process by potentially allowing a bidder to use confidential information it has obtained about its standing vis-à-vis its competitors to strategically revise its bid.

As the Commission itself recently recognized,⁶² a fair and just competitive bidding process must ensure that participants are informed of the rules of the road at the outset. And, more importantly, a fair and just competitive bidding process must ensure that those bidders can be confident that the agency will adhere to those procedures throughout the proceeding. As noted above, any abrupt departure from the established bidding procedures at this stage would raise serious questions of fairness and integrity of the process. Under the circumstances here, the competitive process would be seriously undermined if the incumbent Administrator were permitted to submit another bid after the submission of each bidder's *Best and Final Offer*.

⁶¹ 41 C.F.R. § 102-3.30(c).

⁶² *See, e.g., In the Matter of Connect America Fund*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 14-54, ¶ 226 (rel. June 10, 2014) ("We recognize the importance of specifying in advance objective, well-defined, and measurable criteria for selecting among entities that seek funding in a competitive bidding process.").

Finally, the Commission should keep in mind that we are not dealing with a government contract, but rather a “private contract between private parties”⁶³—i.e., members of the industry and the LNPA. As a result, the beneficiary of a fair and efficient process is the industry itself, and ultimately consumers, not the agency. Simply put, it is the industry (and consumers) that will ultimately be paying the fees of the new LNPA. That fact reinforces the conclusion that the Commission must be mindful of the impact, both fiscal and operational, of any further delays.

III. CONCLUSION

The Commission should promptly conclude the LNPA selection process and move forward with the implementation of the next LNPA contract to ensure that effective and efficient number porting remains available to the industry and consumers.

Respectfully submitted,

CTIA – THE WIRELESS ASSOCIATION ® and
UNITED STATES TELECOM ASSOCIATION

By: /s/ Michael F. Altschul

Michael F. Altschul
Senior Vice President & General Counsel
CTIA – The Wireless Association ®
1400 16th Street, NW, Suite 600
Washington, D.C. 20036
202-785-0081

Jonathan B. Banks
Senior Vice President, Law & Policy
USTelecom
607 14th Street, N.W., Suite 400
Washington, DC 20005
202-326-7272

July 25, 2014

⁶³ Letter from Richard Fruchterman, Public Policy and Regulatory Counsel for Neustar, Inc., to Marlene Dortch, Secretary, Federal Communication Commission, Attachment at 11, WCB Docket No. 09-109 (filed Dec. 9, 2009).