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RE: Comments of COMPTEL on Telcordia Dispute Concerning Necessity of Adding Certain URI Codes for the Completion of Telephone Calls

Dear Commissioner Kane, Mr. Gray and Mr. Koutsky:

COMPTEL submits these comments in response to the dispute Telcordia filed with the North American Numbering Council (“NANC”) with respect to the decision of by the North American Portability Management LLC (“NAPM”) to provide for Uniform Resource Identifier (“URI”) fields for Voice, Multimedia Messaging Service (“MMS”) and Short Messaging Service (“SMS”) to be include in, and provisioned through, the NPAC database.¹ Telcordia objects to the inclusion of these fields in the NPAC database. Nevertheless, the information provided by these fields is necessary for the routing of certain types of telephone calls. Accordingly, it is permissible, as well as beneficial, that the information be included in the NPAC database.

¹ Letter of John T. Nakahata, Counsel to Telcordia Technologies, Inc. to Thomas M. Koutsky, Chairman, North American Numbering Council, Re: Request that NANC Resolve Dispute Concerning Necessity of Adding Certain URI Codes for the Completion of Telephone Calls, dated May 26, 2009 (“Telcordia Dispute”).

Change Orders 429, 430 and 435, of Amendment 72 to the number portability agreement between NeuStar (the administrator of the NPAC) and the NAPM, provide for the inclusion in the NPAC database and provision through that database of URI fields for voice, MMS and SMS. Telcordia argues that the inclusion of the aforementioned URI fields in the NPAC database are not necessary to route telephone calls to the appropriate telecommunications carriers and, therefore, it is impermissible for these fields to be included in the database. Specifically, Telcordia argues that since “the voice, MMS and SMS communications that are the subject of the change orders are being completed today without these URI fields existing in the NPAC database”² these URIs may not be included in the NPAC in accordance with Section 52.25(f) of the Commission’s rules.

Telcordia, however, is misinterpreting the standard set forth in Section 52.25(f). First, Telcordia argues that since there are alternative database options for obtaining this information the data must be excluded from the NPAC.³ The fallacy of this argument is that it rests on the erroneous notion that Section 52.25(f) requires not only that the information itself be necessary for call routing, but also that the inclusion of that information in the NPAC be necessary for the routing of a telephone call. This, however, is not what the Commission’s rule states. Specifically, Section 52.25 states:

“(f) The information contained in the regional databases shall be limited to *the information necessary to route telephone calls* to the appropriate telecommunications carriers....”⁴

The rule requires only that information itself – not the inclusion of the information in the NPAC - be necessary to route the call. In particular, the NPAC does not have to be the sole viable means to provide the data. While private ENUM databases may offer an alternative means, as stated in Change Order Number: NANC 400, “[t]he provisioning and distributing of routing information is the precise charter of the NPAC for all ported and pooled TNs.” Moreover, the Commission did not want carriers to be reliant on private databases for call routing as demonstrated by its establishment of a performance criteria in *Telephone Number Portability Order* that providers not be required “to rely on databases, other network facilities, or service provide by other telecommunications carrier in order to route calls to the proper termination points.”⁵

Accordingly, pursuant to Section 52.25(f) of the Commission’s rules, the information at issue need only to be a necessity for call routing which these URIs are in the case of IP-to-IP Voice, SMS and MMS calls. Indeed, the need for these URIs for the routing of certain calls is not even in dispute. Telcordia’s argument that, under the ENUM process, port corrections for IP-to-IP communications are accomplished by using the ENUM database to determine the URI for call routing concedes the point that the URIs are necessary for call routing. Likewise, the statement of the Chair of the CC1

² Telcordia Dispute at 12.

³ *Id* at 13.

⁴ 47 CFR 52.25 (emphasis added).

⁵ *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8378 (1996)(“Telephone Number Portability Order”).

ENUM LLC to the LNPA WG Co-Chairs, in the letter reference by Telcordia, that the primary driver of the LLC efforts is to “satisfy the industry’s need for such URIs for call routing”⁶ is an acknowledgement of a “need” for these URIs for the routing of IP-to-IP calls.

Moreover, Telcordia’s argument, based on a 2005 Future of Numbering Working Group Report on NANC Change Order 400, that “no additional information beyond that currently in the NPAC is needed to complete telephone calls to ported numbers through the PSTN”⁷ is irrelevant and inaccurate. Nothing in the Commission rules explicitly restricts the information contained in the NPAC to that which is necessary for routing through the PSTN, let alone routing through the PSTN as it existed at the time the rules were adopted, nor should the Commission’s rules be interpreted in such a stagnate manner. Such a requirement would not only be tantamount the Commission dictating the routing and technology used for call completion, but also basing this limitation on dated technology. Such an interpretation of the Commission’s rules would be inconsistent with the policies promoting innovation as articulated in the *Telephone Number Portability Order*, exemplified by the Commission’s stated principle of “encourage[ing] technological development.”⁸ The inclusion of these URIs in the NPAC fosters much needed technological innovation in the routing of telephone calls as currently the PSTN is being transformed from a circuit switched network to an all packet network. In fact, Crossfire Media recently estimated that 90% of the interLATA PSTN and 60% of the intraLATA PSTN has been updated with Internet protocol (“IP”) technology.⁹

Finally, Telcordia’s claim that the inclusion in the NPAC database of URIs fields for SMS and MMS are impermissible because these services do not involve “telephone calls” in accordance with the Commission’s rules¹⁰ is likewise without merit. The Commission in other contexts has found a text message to be a “call.”¹¹ Specifically, in its interpretation of the Telephone Consumer Protection Act, the Commission found the term ‘call’ to “encompasses both voice calls and text calls to wireless numbers, including, for example short message service (SMS) calls, provided the call is made to a telephone number assigned to such service.”¹² The Commission’s reference to a term in its rules should be interpreted consistently with the Commission’s interpretation of the term in a statute. It would be illogical to find that the Commission includes SMS in its statutory interpretation of the term ‘call’ but excludes from its own use of the term in its rules. Additionally, in upholding the Commission’s statutory interpretation, The U.S. Court of Appeals for the Ninth Circuit found the inclusion of a

⁶ See Letter of Karen Mulberry, Chairman, CC1 ENUM LLC, to Gary Sacra and Paula Jordan, LNPA WG Co-Chairs, dated March 28, 2005, Exhibit F of Telcordia Dispute.

⁷ Telcordia Dispute at 14.

⁸ See *Telephone Number Portability Order* at 8354.

⁹ Presentation of Carl Ford, Vice President, Crossfire Media, to National Association of Regulatory Utility Commissioners, Staff Telecommunications Subcommittee, Feb. 14, 2009.

¹⁰ Telcordia Dispute at 12.

¹¹ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd. 14014, 14115 (2003)(“TCPA Order”).

¹² *Id.*

text message in the term ‘call’ to be consistent with the dictionary’s definition of ‘call’ in that it is defined as “to communicate with or try to get into communication with a person by telephone.”¹³ The Court also found that it “is undisputed that text messaging is a form of communication used primarily between telephones.”¹⁴ Thus, it would be contrary to the findings of both the Commission and the Ninth Circuit to find SMS not to be a “telephone call.” The interpretation also applies to MMS, as MMS also is a means to communicate with or try to get into communications with a person via telephone.

Respectfully Submitted,

/s/

Karen Reidy
Vice President, Regulatory Affairs

¹³ *Satterfield v. Simon & Schuster, Inc.*, United States Court of Appeals for the Ninth Circuit, No. 07-16356, 7329, 7343-4 (June 19, 2009). Available at <http://www.ca9.uscourts.gov/datastore/opinions/2009/06/19/07-16356.pdf>

¹⁴ *Id* at 7344.