

August 16, 2010

Honorable Betty Ann Kane  
Chairman, North American Numbering Council  
District of Columbia Public Service Commission  
1333 H Street NW, West Tower 7<sup>th</sup> Floor  
Washington, DC 20005

Don Gray  
Telecommunications Specialist  
Nebraska Public Service Commission  
1200 N Street  
Lincoln, NE 68508

Re: Connecticut Department of Public Utility Control Comments on Update on  
Telcordia Technologies, Inc. Request for Dispute Resolution

Dear Chairman Kane and Mr. Gray:

In May 2009, Telcordia Technologies, Inc. (Telcordia) filed with the North American Numbering Council (NANC) a request for dispute resolution. In July 2009, the then NANC Chair, Tom Koutsky, created a small team to draft a recommended NANC decision resolving the dispute. Other members of that team were current NANC Chair, DC Commissioner Betty Ann Kane and the Nebraska Public Service Commission's designated alternate member to the NANC, Don Gray. Following Chairman Koutsky's departure from the NANC, Chairman Kane and Mr. Gray sought to bring the dispute resolution to an eventual close. Their current plan is to provide the NANC with a draft recommendation for consideration at the September 2010 NANC meeting.

While the State of Connecticut is not directly affected, or involved in all aspects of this dispute, the Connecticut Department of Public Utility Control (CTDPUC) has an opinion on portions of Telcordia's request for dispute resolution. Specifically, the CTDPUC is concerned with Telcordia's attempt to narrow the definition of a telephone call. That is, Telcordia's suggestion that certain data fields which the Local Number Portability Administration Working Group (LNPA) has agreed to add to the Number Portability Administration Center (NPAC) are "not necessary to route telephone calls," a phrase taken from Section 52.25 of the FCC Rules.<sup>1</sup> Particularly, that these data fields would support short message service (SMS) and multiple messaging service (MMS) or text messaging services and/or voice over MMS and SMS.

Telcordia appears to attempt to narrow the definition of what is a "telephone call" to traditional public switched telephone network voice services. Telcordia seems to be

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<sup>1</sup> See the Wiltshire & Grannis LLP May 26, 2009 Letter, filed on behalf of Telcordia Technologies to Thomas M. Koutsky, Chairman North American Numbering Council, p. 1.

of the opinion that the FCC's definition of "telephone call" with regard to number portability was frozen in time when number portability was first mandated in 1996.<sup>2</sup>

The CTDPUC disagrees. First, the states have in the past supported other fields in the NPAC that are "not necessary to route telephone calls." In 2004, the states supported the entry of change order 399 (for an Alternate Service Provider ID) into the NPAC, a field that allows law enforcement agencies to identify the reseller or Voice over Internet Protocol provider associated with a ported telephone number. Law enforcement agencies use this information in order to correctly direct their subpoenas when attempting to gather information necessary for a criminal investigation. This field is not used in the routing of telephone calls and under Telcordia's narrow definition, may face removal from the NPAC. The states continue to support law enforcement agencies' access to this valuable information, regardless of whether it is specifically used for the routing of telephone calls.

Second, the states are on the "front line" working directly with their constituents addressing many telemarketing and spamming complaints. The states and the federal government have worked to assist consumers to avoid telemarketers via do-not-call lists, and by enforcing new policies, such as the Telecommunications Consumer Protection Act of 1991 (TCPA). The enforcement efforts surrounding telemarketing and spam do not support an overly narrow definition of the term "telephone call." In fact, they have, in general, worked to expand the definition of that term.

For example, in implementing the TCPA, the Federal Communications Commission (FCC) has specifically stated that the TCPA's prohibition on autodialed telephone calls encompasses both voice calls and text calls to wireless numbers including, SMS calls.<sup>3</sup> Additionally, recent court opinions have supported a broad interpretation of the term "telephone call." In particular, numerous courts have held that the TCPA's prohibition on certain telemarketing calls extends to text messages and that a text message is a call. See for example the Arizona Court of Appeals wherein it wrote that:

Acacia did not, as it contends, simply send e-mail to an e-mail address. Using its computers and the Internet, Acacia co-opted the SMS service offered by Joffe's carrier to deliver SMS text messages to Joffe by telephone. As the trial court correctly observed, Acacia "initiated a demand to make a

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<sup>2</sup> *Id.*

<sup>3</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd 14014, 14115 (2003); *see also Rules and Regulations Implementing and Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003; Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 19 FCC Rcd 15927, 15934 (2004) (stating that the "prohibition on using automatic telephone dialing systems to make calls to wireless phone numbers applies to text messages (e.g., phone-to-phone SMS), as well as voice calls").

connection . . . for the purpose of delivering a message by telephone encouraging the purchase of services or investment in a product offered" by it. In so doing, Acacia attempted to communicate by telephone. Under the TCPA, Acacia called Joffe.<sup>4</sup>

Also, in June 2009, the Ninth Circuit Court of Appeals determined that while the TCPA does not define "call," it observed that "the FCC has explicitly stated that the TCPA's prohibition . . . encompasses both voice calls and text calls to wireless numbers including, for example, short message service (SMS) calls." The court further noted that the FCC subsequently confirmed that the prohibition on using automatic telephone dialing systems to make calls to wireless numbers, applies to wireless text messages as well as to voice calls.<sup>5</sup>

In addition, in a December 14, 2009 ruling, the US District Court, Northern District of Illinois agreed with the FCC's interpretation that congressional findings and intent apply with equal force to SMS messages. That court also concluded that an SMS message was a "call" within the meaning of the TCPA.<sup>6</sup>

Finally, on March 23, 2010, the US District Court, Northern District of Illinois agreed with the FCC's interpretation that section 227 of the TCPA applies to text messages and that a text message constitutes a call for the purposes of the TCPA.<sup>7</sup>

In the opinion of the CTDPUC, a NANC recommendation of a narrowed definition of "telephone call" would potentially be contrary to not only previous FCC TCPA-related decisions in the realm of consumer protection, but also numerous court rulings in favor of broader consumer protections. Therefore, the CTDPUC believes that any NANC recommended definition of the term "telephone calls" be at least as broad as those being used in the context of the TCPA. The CTDPUC also believes that it is appropriate to leave the term without rigid definition as the FCC seems to have done to date so as to not exclude future technologies.

Sincerely,

DEPARTMENT OF PUBLIC UTILITY CONTROL

Kimberley J. Santopietro  
Executive Secretary

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<sup>4</sup> See, e.g., *Joffe v. Acacia Mortgage Corp.*, 211 Ariz. 325 (2006).

<sup>5</sup> See, e.g., *Satterfield v. Simon & Schuster*, 2009 WL 1708081 (9th Cir. June 19, 2009);

<sup>6</sup> See, e.g., *Abbas v. Selling Source, LLC*. Case 1:09-cv-03413. (Dec. 14, 2009)

<sup>7</sup> See, e.g., *Lozano v. Twentieth Century Fox Film Corp.*, Case No. Civ. 09-cv-6344 (Mar. 23, 2010)