

June 18, 2009

EX PARTE
VIA ELECTRONIC FILING

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

Re: WCB Docket No. 07-149
Response of the North American Portability Management LLC (the "NAPM LLC") to Telcordia Technologies, Inc. Ex Parte Filing, dated June 12, 2009.

Dear Ms. Dortch:

Why the NAPM LLC is responding to Telcordia's June 12, 2009 Ex Parte.

The NAPM LLC is filing this Ex Parte solely in response to Telcordia's latest Ex Parte filing, dated June 12, 2009 (the "June 12 Ex Parte"), so that the FCC and the Wireline Competition Bureau can rest assured that there is no need to rush to intervene now to grant the extraordinary and unprecedented relief that Telcordia seeks in the June 12 Ex Parte. Telcordia's request in the June 12 Ex Parte that a "standstill order" should be issued now to block the addition into the Number Portability Administration Center (the "NPAC") of the three URI parameters pursuant to North American Numbering Counsel (the "NANC") Change Orders 429, 430 and 435 should be denied so that the existing and time-proven NANC dispute resolution process that Telcordia itself triggered should be allowed to proceed as it was intended. Likewise, Telcordia's other request in the June 12 Ex Parte that the FCC should immediately seek public comments on Telcordia's most recent pending Petition, filed May 20, 2009, should also be denied at this time.

This is at least the 10th time in the last six months that Telcordia has complained to the FCC or the NANC over Telcordia's disagreement with decisions made by the NAPM LLC.

Telcordia literally has 7 filings before the FCC¹ and several pending requests before NANC² over the same matter and set of concerns since December 2008. Until now, the NAPM LLC had decided to rely on the appropriate procedures under the existing processes to address these repetitious and meritless complaints and had decided to defer responding until the time the complaints rose to the procedural level requiring a response. But with the filing of the June 12 Ex Parte, the misrepresentations from Telcordia are simply too numerous to remain unanswered now or to await response in the ordinary course of the pending proceedings.

In its June 12 Ex Parte, Telcordia is demanding that the FCC intervene now to further Telcordia's own business purposes; that is, simply to allow Telcordia to unseat a business competitor under existing contracts and to accelerate and truncate the deliberative process for the next generation of the NPAC. Legitimate grievances and concerns deserve airing and argument before the proper regulators to ascertain the true merits and to advance the consumers' best interests, but Telcordia's repetitious, numerous and duplicative filings and calls to action before the FCC and the NANC betray its true desire merely to serve its own global business strategies.

The NAPM LLC stands ready and is willing to address all substantive issues and questions with respect to recent amendments to the NPAC Master Agreements and to its supervision and administration of local number portability since its inception and implementation. However, Telcordia should not be permitted to subvert the regulatory process, as it attempts in its June 12 Ex Parte, by seeking the extraordinary and unnecessary interim relief from the FCC.

The sole purpose of this Ex Parte is to refute Telcordia's assertions in the June 12 Ex Parte that immediate and extraordinary relief is required or warranted now.

The NAPM LLC wishes in this Ex Parte only to address the contentions of Telcordia in the June 12 Ex Parte, so that the FCC and the Wireline Competition Bureau do not grant the extraordinary and unwarranted relief requested by Telcordia in the June 12 Ex Parte. The NAPM LLC does not intend now to address and to refute the numerous allegations set out in Telcordia's prior ex partes, petitions and requests for relief. Those allegations can be addressed and refuted later in the appropriate regulatory forum. Accordingly, this Ex Parte is limited in its scope.

1. The following filings by Telcordia since December 2008 are shown on the FCC website for Proceeding No. 07-149: Notice of Ex Parte, received June 12, 2009; Request, received May 22, 2009; Petition, received May 20, 2009; Petition, received May 20, 2009; Request, received May 18, 2009; Notice of Ex Parte, received February 19, 2009; Notice of Ex Parte, received December 12, 2008.

2. See for example, letter dated May 26, 2009, to Thomas M. Koutsky, Chairman, North American Numbering Counsel, invoking the dispute resolution process before the NANC pursuant to Section 52.26(b)(3) of 47 C.F.R., and attached in full as Attachment 2 to the June 12 Ex Parte.

The NAPM LLC has and continues to act lawfully and within its authority, charter and organizational scope.

The NAPM LLC has and continues to act lawfully and within its authority, charter and organizational scope, and has, and continues to, accede to and expressly to acknowledge in all dealings, contractual and otherwise, the authority of the FCC and the NANC. There is no need for the FCC now to intervene to grant the extraordinary and unprecedented relief sought by Telcordia for a standstill order or to issue or accelerate the comment period with respect to Telcordia's most recent pending Petition, filed May 20, 2009.

Without exception, in all of its conduct and dealings, the NAPM LLC has both acknowledged the primacy of FCC oversight and NANC delegated oversight and explicitly has incorporated that acknowledgment into all of its contractual arrangements.³ This is not mere, empty rhetoric; it is verifiable fact and historical truth.

Telcordia has failed to satisfy the FCC's own criteria for issuing a standstill order.

Although the FCC possesses the authority, and has on occasions in the past, issued standstill orders, the standards for issuing standstill orders, referred to as preliminary or interim injunctive relief, are strict and demanding. In considering a request for such interim injunctive relief, the Commission applies the four criteria articulated in *Virginia Petroleum Jobbers Asso. v.*

3. This is a longstanding and consistent practice and tenet of the NAPM LLC. For example, all of the original Master Agreements between the original charter regional LLCs and the NPAC administrator contain, and still contain the following provision as part of Article 25.1:

“Contractor expressly recognizes that (i) Customer, Members and the Users and the NPAC/SMS are or may be subject to certain federal and state statutes and rules and regulations promulgated thereunder, as well as rules, regulations, orders, opinions, decisions and possible approval of the FCC, NANC and other regulatory bodies having jurisdiction or delegated authority over Customer, Member and the Users of the NPAC/SMS and (ii) this Agreement is subject to changes and modifications required as a result of any of the foregoing;...”

In addition, Statement of Work (“SOW”) 25 contains the following provision that expressly recognizes the regulatory authority of the FCC with respect to all contracting by the NAPM LLC, and this provision is present in all SOWs since:

“If any provision of this SOW is held invalid or unenforceable the remaining provision of this SOW shall become null and void and be of no further force or effect. If by rule, regulation, order, opinion or decision of the Federal Communications Commission or any other regulatory body having jurisdiction or delegated authority with respect to the subject matter of this SOW or the Master Agreement, this SOW is required to be rescinded or is declared ineffective or void in whole or in part, whether temporarily, permanently or ab initio (an “Ineffectiveness Determination”), immediately upon such Ineffectiveness Determination and without any requirement on any party to appeal, protest or otherwise seek clarification of such Ineffectiveness Determination, this SOW shall be rescinded and of no further force or effect retroactively to the SOW Effective Date. Consequently, the Master Agreement in effect immediately prior to the SOW Effective Date shall continue in full force and effect in accordance with its terms, unchanged or modified in any way by this SOW...”

Federal Power Com., 259 F.2d 921 (D.C. Cir. 1958) namely, the following: "(1) likelihood of success on the merits; (2) the threat of irreparable harm absent the grant of preliminary relief; (3) the degree of injury to other parties if relief is granted; and (4) that the issuance of the order will further the public interest." *AT&T Corp.*, 13 FCC Rcd 14508, 14515 (FCC 1998). In applying the four criteria, the FCC has held that only when the factors are "heavily tilted in the movant's favor" is such extraordinary relief appropriate. *In re Implementation of Video Description of Video Programming*, 17 FCC Rcd 6175, 6176-78 (FCC 2002).

In its June 12 Ex Parte, Telcordia fails to apply these four criteria, choosing instead to rely on generalities, speculation and conjecture. When the criteria are applied, it is clear that they are not "heavily tilted in the movant's [Telcordia's] favor." A close call or even a predominant tilt in Telcordia's favor is not enough by the FCC's own standard to grant a standstill order. Under this standard, Telcordia has failed to carry its burden that the standstill order should be issued.

In applying the first criterion, despite Telcordia's assertions, it is not clear that Telcordia will succeed on the merits of its claims that NANC Change Orders 429, 430 and 435 have not been properly approved for implementation. It is without dispute that there was, in fact, *no consensus and agreement* among subject matter experts that Change Order 400⁴ *was beyond* the scope of permissible LNP enhancements, even before the FCC issued its Order extending the obligations of Local Number Portability to interconnected VoIP carriers pursuant to FCC 07-188, adopted October 31, 2007 (the "Interconnected VoIP Order"), and even before the Wireline Competition Bureau sent its letter dated February 4, 2008 (the "WCB February 4, 2008 Letter"), stating that the industry should "reconsider Change Order 400 rather than continue to hold in abeyance its consideration" in light of the Interconnected VoIP Order and the FCC's "steps designed to ensure the benefits of local number portability..." In fact, the Future of Numbering Working Group Report and Recommendation on NANC Change Orders 399 and 400, dated June 10, 2005 (the "FoN-WG 2005 Report"), detailed under the headings "Pro NANC 400 Conclusions" and "Pro Recommendations" the several bases and authority for concluding that Change Order 400 *was* within the scope of LNP. Now, after the issuance of the FCC's Interconnected VoIP Order in October 2007, and subsequent WCB February 4, 2008 Letter, it is even more compelling that the change orders were approved for implementation in accordance with the same subject matter expert review and consensus procedure and regulatory consultation, advising and notification process utilized in the past consistently for enhancing the NPAC and supplementing its fields and parameters.⁵

4. Change Order 400 was the predecessor to Change Orders 429, 430 and 435, which each address separate URI parameters earlier included together in Change Order 400.

5. The NAPM LLC is concerned that intervention now as requested by Telcordia actually could needlessly thwart the FCC's extension of the LNP obligations to interconnected VoIP providers pursuant to the Interconnected VoIP Order, and the direction of the Wireline Competition Bureau itself under the WCB February 4, 2008 Letter. The extension of the LNP obligations to interconnected VoIP carriers and the continued improvement and extension of the benefits of number portability to consumers is a prime and immediate imperative. The unwarranted and blanket summary suspension of the implementation of NANC Change Orders 429, 430 and 435, as requested by

In applying the second criterion of the FCC's test, Telcordia has failed to make a compelling showing that there will be irreparable harm absent a grant of the requested standstill order. Instead, Telcordia has offered mere conjecture and speculation. This is not sufficient.

Not only has Telcordia failed to make a showing that irreparable harm will result if the standstill order is not issued, but the opposite is true; no irreparable harm can or will result. The NANC has initiated its FCC-mandated dispute resolution process, and the Statement of Work that implements the three change orders, SOW 72, expressly provides for withdrawal and purging of the so-called URI parameters authorized by these three change orders in the event their inclusion into the NPAC is disallowed by the FCC.⁶ Further, Telcordia's contentions that inclusion of these URI parameters in the NPAC will somehow stifle nascent ENUM databases is wholly without support or evidence, and has, in fact, been refuted by knowledgeable subject matter experts, as reflected in the FoN-WG 2005 Report.

In applying the third criterion of the test, there is a substantial likelihood that the interest of third parties actually *could be impaired* if a standstill order is granted. Therefore, this criterion is not satisfied by Telcordia. The FoN-WG 2005 Report is replete with examples of service providers demanding the functionality of having the URI parameters added to the NPAC. This need may even have been increased with the issuance of the FCC's Interconnected VoIP Order in October 2007, and subsequent WCB February 4, 2008 Letter. Further, with the introduction of new and more capable smart phones and PDAs on successively shorter cycles, existing and new services associated with telephone numbers may become increasingly vulnerable to being adversely affected by the porting of telephone numbers, and more services may become "broken" by porting if the NPAC is not maintained with appropriate functionalities. Telcordia is being disingenuous if it asserts that there are no such third parties who would suffer impairment if the standstill order is granted.

Finally, applying the fourth criterion, Telcordia has completely failed to show that the public interest will be furthered by issuance of the standstill order. In fact, the public interest likely would be adversely affected and adversely impacted immediately (and almost certainly so in the short-run alone) if a standstill order is granted. The potential overlap between the NPAC and possible future or envisioned ENUM-based databases cannot be denied, but it is not present, immediate or real today, and it is not clear how one affects the other. For example, subject matter experts included in the FoN-WG 2005 Report the following conclusion: "In summary

Telcordia, solely upon the bald allegations, speculation and conjecture of a vendor could jeopardize certain enhancements and is contrary to the past practices of the industry, the FCC, the Wireline Competition Bureau and the NANC.

6. Article 9 of SOW 72 states in pertinent part as follows: "If as a result of a final order issued by the U.S. Federal Communications Commission (FCC), any New URI Parameter is required to be excluded from the NPAC/SMS, then Contractor shall at no cost to Users in the Service Area, and after coordinating with Customer and Users supporting the subject New URI Parameter, take all steps necessary to comply with such final order concerning the exclusion of the New URI Parameter."

ENUM and NANC 400 have little technological overlap at this time and in fact they are complementary.” Those potential overlaps can and should be addressed in the future as part of the ordinary deliberative industry and regulatory processes, but not as part of some emergency, interim injunctive relief at this time.

In sum, Telcordia simply has failed to satisfy the FCC’s own criteria for granting a standstill order in these circumstances. Telcordia’s request should be denied, and the NANC’s dispute resolution process should be allowed to proceed.

The Bottom Line: There is no need for the FCC and the Wireline Competition Bureau to oust the NAPM LLC from its role, to intervene now to nullify existing NPAC agreements or to rush to rebid the NPAC Administration.

Telcordia requests that the FCC and the Wireline Competition Bureau take the extraordinary steps of “firing” the NAPM LLC, invalidating arms length existing NPAC agreements, and commencing an accelerated and undefined public bidding and contact award process, all based upon Telcordia’s contentions that Telcordia’s unsolicited proposals to offer NPAC services at reduced cost have not been accepted. Telcordia also alleges that the NAPM LLC has engaged in a pattern of clandestine practices to the detriment of consumers. Those claims are wholly without merit and are subject to concrete, substantiated refutation. But the time for that is not in this Ex Parte.

In this Ex Parte, the NAPM LLC merely wishes to assure the FCC and the Wireline Competition Bureau that there is no need for the extraordinary intervention requested by Telcordia immediately to seek and to accelerate public comments on Telcordia’s Petition. The NAPM LLC has a long track record of ensuring the successful implementation of porting and the continued success of porting as telecommunications evolve. Each modification to the NPAC Master Agreements has been accomplished with a view to both reducing costs and absolutely guaranteeing call completion and satisfaction to the ultimate consumer. It is a guiding principle of the NAPM LLC that porting must work and must continue to work. And each modification to the NPAC Master Agreements was accomplished with an eye toward the next generation and preserving flexibility and options in an ever-changing environment.

The NAPM LLC has always acted in good faith. At all times the NAPM LLC has exercised its collective best judgment. And at all appropriate times it has consulted with the FCC and NANC seeking guidance and direction.

The NAPM LLC has successfully managed the administration of the NPAC through initial wireline porting, then wireless porting, then pooling, then through innovative performance based metrics to ensure stability and service certainty, then through pricing savings in the face of unprecedented porting volumes. And during this entire time, the industry, the technologies and the consumers have all changed and evolved. And during this entire time, the NAPM LLC has been cognizant of the future and of the need always to be thinking of “what’s next.”

In keeping with that sense of always thinking of “what’s next,” the NAPM LLC has a standing advisory committee called the Future of the NPAC (the “FoNPAC Committee”) that has been charged with considering the next generation NPAC. Recent developments, including the approaching expiration of the recited NPAC Master Agreement terms, the increasing evolution of VoIP, the issuance of the FCC’s Interconnected VoIP Order in October 2007, the proliferation of smart phones and associated telecommunications-related services, and the continuing work and reporting of subject matter expert groups on such topics as peered NPACs and intra-region multi-vendor models (that is, multiple vendors in each region, not just in different regions), all point to the approach of that next generation NPAC. Accordingly, the FoNPAC has been meeting in earnest and has introduced and is discussing a timetable with respect to that next generation NPAC that would culminate in a competitive RFI-RFP preparation, issuance and consideration cycle.

Such a task is not easy or quick. Nonetheless, the task is in process. There are no penalties or charges incurred by the industry under SOW 70 by commencing and pursuing that process.

The NAPM LLC respectfully sees no benefits to granting the extraordinary relief Telcordia requests. The philosophy expressed in the Second Report and Order that the LLC structure was the best and most efficient means of implementing portability is just as true today for continuing portability and moving to the next generation of NPAC as it was for implementing portability. Therefore, the NAPM LLC urges the FCC to deny Telcordia’s request that the FCC seek or accelerate public comments in support of Telcordia’s demand that the existing structure of LNP administration (set forth in the Second Report and Order⁷) be scrapped, that the NAPM LLC be replaced, that the existing NPAC agreements be nullified in part, and that the FCC immediately initiate and administer a competitive bidding process (even though the original Master Agreements were award by an RFP process administered by the various LLCs). Telcordia’s requests may further Telcordia’s global business strategies, but they do not further the public interest.

For all these reasons, the NAPM LLC respectfully requests that the relief requested in Telcordia’s June 12 Ex Parte be denied.

Very truly yours,

BERENBAUM WEINSHIENK PC



Dan A. Sciallo

7. See, *Second Report and Order*, CC Docket Number 95-116, RM 8535, FCC 97-289, adopted August 14, 1997.