

August 31, 2009

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**Re: Reply in Support of Telcordia's Request that NANC Resolve Dispute  
Concerning Necessity of Adding Certain URI Codes for the  
Completion of Telephone Calls**

Dear Chairman Kane, Mr. Gray and Chairman Koutsky:

Telcordia Technologies ("Telcordia") hereby responds to the written comments submitted to date that support the incorporation of Change Orders 429, 430 and 435 into Amendment 72 (collectively "Change Order proponents" or "proponents"). Tellingly, in defending the process followed here by the Local Number Portability Administration Working Group (LNPA WG) and the North American Portability Management LLC (NAPM LLC), none of the proponents actually addresses the plain language of the FCC's rule in 47 C.F.R. § 52.25(f). And none points to any services that do not work without putting these URI fields in the NPAC database. As discussed further below, the record continues to strongly support granting Telcordia's request to find that Amendment 72, to the extent that it incorporates Change Orders 429, 430 and 435, is invalid under 47 C.F.R. § 52.25(f).

## I. INTRODUCTION AND SUMMARY

At issue in this dispute is the simple question: Do the provisions of Amendment 72<sup>1</sup> implementing Change Orders 429, 430 and 435 violate the commands of 47 C.F.R. § 52.25(f) by permitting data to be placed in the NPAC database which NANC has not found to be “necessary to route telephone calls to the appropriate telecommunications carrier,” and which is not necessary to do so? Whether these “optional” URI codes might be desirable or convenient to some providers is not the issue: the FCC required that data in the NPAC database (“the NPAC”) be limited only to that “necessary to route telephone calls to the appropriate telecommunications carrier.” The FCC deliberately set a high standard for expanding the NPAC database and including additional data, and the record shows that Amendment 72 fails to meet that standard.

The written submissions filed to date confirm that Amendment 72 fails both as a matter of process and substance.<sup>2</sup> Amendment 72’s proponents argue that Telcordia is asking the NANC to rewrite all of the procedures used over the last twelve years to develop number porting processes. That is not the case. Telcordia is invoking an established process to resolve issues that are in dispute. From a process perspective, what is at issue here is only what findings must be made, and by whom, when questions have been raised as to the appropriateness under 47 C.F.R. § 52.25(f) of including certain information in the NPAC, not any broader set of procedural questions. Proponents appear to posit that a necessity finding never needs to be made, no matter what data is proposed for inclusion in the NPAC, but if that were the case, how would a party that believed the data exceeded the permissible scope of the NPAC ever be able to present its objections? NANC’s Guidelines and Operating Principles describe an escalation process that can be invoked only if express findings of necessity are made in cases in which the necessity of specific data fields is challenged. Rule 52.25(f) is clear: “The NANC shall determine what specific information is necessary.” This rule only makes sense if an express determination of necessity must be made by NANC when the necessity of the information is called into question.

No commenter seriously asserts that either NANC or the FCC has made the required “necessity” finding. Certainly NANC itself has not acted, as these Change Orders never appeared on a NANC agenda. The last NANC action with respect to these data fields was NANC’s failure to reach consensus at its June 2005 meeting as to whether these data fields should be included in the NPAC, and its decision to forward the issue to the FCC with a report detailing the lack of consensus. And although NeuStar nakedly

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<sup>1</sup> Amendment 72, Statement of Work No. 72 Under Contractor Services Agreement for Number Portability Administration Center/Service Management System, Implementation of NANC 429, NANC 430 and NANC 435 (May 20, 2009), *available at* <http://www.sec.gov/Archives/edgar/data/1265888/000095012309029634/w75001exv10w1w3.htm>.

<sup>2</sup> The NANC Dispute Review Team web page includes a NAPM LLC letter. *See Ex Parte* Letter from Dan A. Sciuillo, Berenbaum Weinshienk PC, to Marlene H. Dortch, FCC (June 18, 2009), *available at* [http://www.nanc-chair.org/docs/mtg\\_docs/NAPM\\_LLC\\_Response\\_June18\\_2009.pdf](http://www.nanc-chair.org/docs/mtg_docs/NAPM_LLC_Response_June18_2009.pdf) (“NAPM *Ex Parte* Letter”). NAPM filed this letter with the FCC in a separate proceeding. *See* WCB Docket No. 07-149 (NAPM’s filing is available at [http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6520222577](http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520222577)). Telcordia notes that the issues in that proceeding, although related to this dispute, are different from those raised here.

asserts that the FCC gave the “green light” to these Change Orders, it ignores the plain language of the FCC’s February 4, 2008 letter, which simply permitted the industry to “reconsider” these data fields. The February 4, 2008 letter cannot be read to contain a necessity finding by the FCC.

Without either FCC or NANC action, the proponents of Change Orders 429, 430 and 435 rely on the LNPA WG’s consideration of these orders. But none explains how the LNPA WG could legally substitute for the NANC. In the first instance, nothing in the FCC’s rules or NANC’s charter authorizes it to delegate its ultimate responsibilities to a working group. To the contrary, NANC’s operating principles make clear that its working groups “develop draft recommendations for NANC consideration,” which NANC can “accept, reject, change, or remand back to the Working Group with additional direction.”<sup>3</sup> Moreover, if the LNPA WG could act *on behalf* of NANC, as proponents assert, it would be an advisory committee under the Federal Advisory Committee Act, but it has never been so chartered or run. So even if the LNPA WG actually made a finding of necessity – to which no proponent actually points – that would not meet Rule 52.25(f)’s requirement that NANC do so, because the LNPA WG cannot act in NANC’s stead.

From a substantive perspective, proponents’ arguments are equally strained. First, none of the proponents actually suggests a way to apply the requirement that information be “necessary to route telephone calls to the appropriate telecommunications carriers” without eviscerating it. Telcordia suggests a simple “but for” requirement – whether telephone calls to ported numbers can be routed without loss of quality or function but for the addition of information to the NPAC. Nothing to date demonstrates that only by placing this URI data in the NPAC can carriers or interconnected VoIP providers route calls to the appropriate telecommunications carrier. In fact, Change Order proponents emphasize that use of the fields is “optional,” undercutting any claim that they are “necessary” for routing. One of the problems with proceeding in the manner that the LNPA WG and NAPM have is that this record and analysis are not compiled for any review. But it is significant that no one has come forward with any example of a service that is broken or impaired<sup>4</sup> by porting, and for which the only remedy is placing these URI fields in the NPAC.

In evaluating what “necessary to route telephone calls to the appropriate telecommunications carrier” means, it is important to remember – as proponents choose to ignore – that NPAC is not an ordinary private commercial routing database. To the contrary, NPAC is a unique, government-mandated database in which all carriers and interconnected VoIP providers are required to participate and for which, by FCC rule, they all must bear the costs by FCC rule. Because of NAPM’s contracting decisions, the single supplier of NPAC services holds a *de facto* monopoly – there is only one supplier of NPAC services and there will be only one until such time as the NAPM enters into contracts with NPAC database vendors in addition to NeuStar. Moreover, even the

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<sup>3</sup> NANC Operating Principles at 7 (Apr. 17, 2001), *available at* <http://www.nanc-chair.org/docs/nancguidelines.doc> (“NANC Operating Principles”).

<sup>4</sup> See discussion *infra* Issue 5.

optional use of these fields is recovered through the FCC-mandated cost recovery mechanism, to which all carriers are required to contribute, under penalty of FCC fines. In this context, it is wholly appropriate for the Commission to limit the NPAC only to the data required to allow customers to retain their telephone numbers and services when switching to another service provider. The NANC should decline proponents' invitation to eviscerate the Commission's policy decision and – for the first time – permit it to be included in the NPAC data that is not necessary to routing calls to the appropriate telecommunications carrier – with absolutely no evidence of any service that cannot be provided today without placing the URI fields in the NPAC.

Telcordia wants to make one point absolutely clear: IP routing and interconnection is a competitive market. Telcordia is but one competitor of many. Of the three major U.S. competitions for carrier ENUM services, Telcordia has won one, Verisign has won one, and NeuStar has won one.<sup>5</sup> Several IP-peering federations presently provide IP-routing services.<sup>6</sup> Telcordia welcomes this competition. And for that reason, it objects to this attempt to extend NeuStar's NPAC monopoly into other markets.

In this proceeding, Telcordia asks that NANC resolve this dispute according to the plain terms of the clear Commission rules regarding the content of the NPAC database. The record compiled thus far demonstrates that Amendment 72, to the extent it implements Change Orders 429, 430 and 435 violates Rule 52.25(f) because:

- Change Orders 429, 430 and 435 can only be lawfully implemented in the NPAC database if there is an express NANC or FCC finding that these URIs are “necessary to route telephone calls to the appropriate telecommunications carriers.” Any other process would be contrary to and make a mockery of the FCC's requirement that “The NANC shall determine what specific information is necessary.” (Issue 1)
- Neither NANC nor the FCC determined that the URI codes specified in Change Orders 429, 430 and 435 are “necessary to route telephone calls to the appropriate telecommunications carrier.” This is essentially undisputed as to the FCC and NANC. (Issue 2).
- An LNPA Working Group finding that information is necessary to route telephone calls to the appropriate telecommunications carrier (if one had been made) cannot substitute for such a finding by NANC under 47 C.F.R. § 52.25(f). The rule is specific: NANC must make the “necessity” finding. (Issue 3)
- Although it would have been of no legal effect, in any event, the LNPA Working Group did not make a finding that the URI fields referenced in Change Orders 429, 430 and 435 are necessary to route telephone calls to the appropriate telecommunications carrier. No proponent actually points

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<sup>5</sup> Telcordia was awarded the CC1 ENUM LLC, Verisign was awarded the Cable Labs, and NeuStar, with its Pathfinder product (not an NPAC related product), was awarded the GSM Association contract.

<sup>6</sup> Examples include Arbinet and Stealth.

to any such finding made by the LNPA WG, arguing only – at best – that such finding was implied in the LNPA WG’s actions. (Issue 4)

- The NANC cannot approve URI fields for inclusion in the NPAC database unless such fields are strictly necessary to route telephone calls to the appropriate telecommunications carrier. Rule 52.25(f) is clear on its face, and provides NANC no waiver authority. (Issue 5)
- The URI fields described in Change Orders 429, 430 and 435 are not necessary to route telephone calls to the appropriate telecommunications carrier. No commenter points to any service that would fail or be degraded in quality by the non-inclusion of these fields in the NPAC. This distinguishes this situation from all previous situations in which data beyond those for PSTN-linked voice calls were placed in the NPAC. (Issue 6)

Accordingly, Amendment 72 is invalid to the extent it purports to implement Change Orders 429, 430 and 435. Telcordia accordingly asks that NANC direct NeuStar and the NAPM to rescind Amendment 72.

### III. ARGUMENT

**Issue 1: Can Change Orders 429, 430 and 435 lawfully be implemented in the NPAC database without an express NANC or FCC finding that these URIs are “necessary to route telephone calls to the appropriate telecommunications carriers”?**

Change Orders 429, 430 and 435 cannot lawfully be implemented unless and until the NANC makes an express finding that these URIs are *necessary* to route telephone calls. The language of Rule 52.25(f) is clear. “The information contained in the regional databases *shall be limited* to the information necessary to route telephone calls to the appropriate telecommunications carriers. The NANC shall determine what specific information is necessary.”<sup>7</sup> None of the commenters provide any credible argument reconciling this language with any process other than NANC making such a determination before the fields are implemented in the NPAC. Where, as here, the necessity of including specific information is uncertain, the NANC—or the Commission, if NANC cannot reach a consensus—must decide the question.<sup>8</sup>

Accordingly, this dispute resolution proceeding does not call into question all of the operating procedures of the NANC and the LNPA WG of the past twelve years, as NeuStar contends.<sup>9</sup> Simply put, this proceeding is about what to do in the limited

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<sup>7</sup> 47 C.F.R. § 52.25(f) (emphasis added).

<sup>8</sup> Under the Federal Advisory Committee Act, NANC cannot actually make a final decision, but must make a recommendation to the FCC. *See* 5 U.S.C. App. § 2(b).

<sup>9</sup> Letter from Thomas J. Navin, Wiley Rein, to the Honorable Betty Ann Kane, Chairman, District of Columbia Public Service Commission; Don Gray, Telecommunications Specialist, Nebraska Public Service

circumstance when a request to include data in the NPAC raises concerns that the data is not “necessary to route telephone calls to the appropriate telecommunications carrier.” In that narrow instance – which, in the past twelve years, has arisen only with respect to these URI fields – Rule 52.25 requires the NANC to make such a finding.

NAPM asserts that fields may be added as long as there is no consensus that they are beyond the scope of permissible enhancements.<sup>10</sup> This reads the rule backwards. The rule does not say fields may be included when NANC fails to reach consensus, but rather that NANC must make a necessity finding before fields may be included. It is unclear from NeuStar’s comments whether it is arguing that a necessity finding never needs to be made, or that, in any event, the required necessity finding was made by the LNPA WG, acting on behalf of the NANC.<sup>11</sup> If NeuStar is arguing that no necessity finding need be made, that cannot be squared with the plain language of Rule 52.25(f). The rule expressly directs NANC to “determine what specific information is necessary.” This plainly calls for a determination, *i.e.*, a finding.

As to NeuStar’s argument that the LNPA WG can act in lieu of NANC with respect to issues under Rule 52.25(f), that argument must fail for the reasons discussed in more detail in response to Issue 3 *infra*. However, it bears pointing out that NeuStar’s proposed interpretation of the rule simply removes NANC entirely from any consideration or determination of necessity, and cannot be reconciled with NANC’s Operating Principles. According to NeuStar, “First, the LNPA WG, on behalf of the NANC, considers the addition of new fields, parameters, elements and other changes to the database. Then, those changes that the LNPA WG approves are forwarded to the NAPM LLC for its consideration.”<sup>12</sup> Remarkably, NeuStar’s world leaves no role for NANC.

Notably, the only NANC precedent – the handling of Change Order 400 in 2005 – demonstrates that NANC’s understanding to date is that final recommendations on a dispute involving the scope of the NPAC under Rule 52.25(f) is an issue that must ultimately be decided by the NANC. At that time, with respect to two of the three URIs at issue here, the LNPA WG did not simply forward its decision on to the NAPM LLC for implementation. Instead, the NANC directed the Future of Numbering Working

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Commission; and Thomas M. Koutsky, Chair, North American Numbering Council, at 2 (Aug. 14, 2009) (“NeuStar Comments”).

<sup>10</sup> NAPM *Ex Parte* Letter at 4.

<sup>11</sup> Neither T-Mobile nor Comptel address the issue of whether NANC must make a necessity finding in the case of a challenge to the appropriateness of including data in the NPAC. *See* Letter from Karen Reidy, Vice President, Regulatory Affairs, Comptel, to the Honorable Betty Ann Kane, Chairman, District of Columbia Public Service Commission; Don Gray, Telecommunications Specialist, Nebraska Public Service Commission; and Thomas M. Koutsky, Chair, North American Numbering Council (Aug. 14, 2009) (“Comptel Comments”); Letter from Anna Miller, Director, National Numbering Policy, T-Mobile USA, Inc. to the Honorable Betty Ann Kane, Chairman, District of Columbia Public Service Commission; Don Gray, Telecommunications Specialist, Nebraska Public Service Commission; and Thomas M. Koutsky, Chair, North American Numbering Council (Aug. 17, 2009) (“T-Mobile Comments”).

<sup>12</sup> NeuStar Comments at 6.

Group (FON WG), as well as the LNPA WG, to review the issue.<sup>13</sup> After the LNPA WG voted to support implementation of Change Order 400, the FON WG could reach no consensus, with some participants arguing that these fields could not be added under Rule 52.25(f). The FON WG then prepared a draft report and recommendation for NANC outlining the arguments on both sides but reflecting that no consensus was reached (“NANC Report on Change Order 400”). NANC itself considered the issue but also failed to reach consensus. So in the only instance in which this issue of compliance with Rule 52.25(f) was directly at issue, the NANC itself – not just its working groups – directly considered the matter and, if a consensus had been reached, would have made a recommendation.

NeuStar incorrectly suggests that the fact that NANC did not make a necessity finding with respect to Change Order 399 shows that no express necessity finding was needed. But that argument ignores the fact that NANC reached consensus on Change Order 399, with no dissenting views pushed forward to the NANC. From a pragmatic standpoint, there was no need for NANC to make a necessity finding with respect to Change Order 399, because by the end of the process, no participant was arguing that Change Order 399 failed to meet the necessity standard. Reflecting this consensus and lack of opposition, the Wireline Competition Bureau Chief noted, “We agree that this does not have any policy, regulatory, or consumer impact on numbering issues.”<sup>14</sup>

The same cannot be said for the URI fields that were simultaneously in dispute under Change Order 400, and which are now two of the three URI fields in dispute here. In those cases, as reflected in NANC’s report on Change Order 400, parties continued expressly to challenge the appropriateness of including these fields in the NPAC, based specifically on the limitations set forth in Rule 52.25(f).<sup>15</sup> There are plainly policy, regulatory and consumer impacts at issue here, as the inclusion of these fields both affects competition policy – including industry structure and cross-subsidy – concerns and because the costs of these “optional” URI fields are borne by all carriers, not just those that choose to avail themselves of those fields.

The plain text of Rule 52.25(f) must govern here. In this case, the dispute about whether including these URI fields in the NPAC is proper has stretched over four years. The rule provides, “The NANC shall determine what specific information is necessary.” The only plausible reading of this directive is that NANC must make the required finding. And the only plausible, and most appropriate, time for NANC to make such a finding is when the addition of such data to the NPAC is being considered, not afterwards.

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<sup>13</sup> NANC Meeting Minutes (March 15, 2005) at 18-19, *available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-260510A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-260510A1.pdf).

<sup>14</sup> Letter of Thomas J. Navin, Chief, Wireline Competition Bureau, to Robert C. Atkinson, Chair, NANC (Aug. 11, 2005) (“Navin Letter”) (attached as Exhibit 1).

<sup>15</sup> Future of Numbering Working Group, Report and Recommendation on NANC Change Orders 399 & 400, at 25-26 *available at* [http://www.nanc-chair.org/docs/nowg/Jun05\\_FoN\\_NANC\\_Change\\_Order\\_Report.doc](http://www.nanc-chair.org/docs/nowg/Jun05_FoN_NANC_Change_Order_Report.doc) (“NANC Report on Change Order 400”).

**Issue 2: Did the NANC or the FCC determine that the URI codes specified in Change Orders 429, 430 and 435 are “necessary to route telephone calls to the appropriate telecommunications carrier”?**

It is undisputed that NANC itself never determined that the URI codes specified in Change Orders 429, 430 and 435 are “necessary to route telephone calls to the appropriate telecommunications carrier.” None of the proponents, including NeuStar, asserts that NANC made such a finding.<sup>16</sup> NeuStar instead argues that the LNPA WG acted in NANC’s stead, which, as addressed in response to Issues 3 and 4, would both be legally ineffective and is factually incorrect. It is undisputed that NANC’s own last action with respect to these URI fields was, in 2005, to report its failure to reach consensus to the Commission, and to forward the NANC Report on Change Order 400.<sup>17</sup>

Nor has the Commission ever determined that the URI fields in Change Order 429, 430 and 435 are “necessary to route telephone calls to the appropriate telecommunications carrier.” Although NeuStar outrageously asserts that a February 4, 2008 letter from the Chief of the Wireline Competition Bureau to the NANC Chair gave a “green light” to the implementation of these URI fields, that letter contained no such statement.<sup>18</sup> The Bureau simply stated, “[T]he industry may reconsider Change Order 400, rather than continue to hold in abeyance its consideration.”<sup>19</sup> The Wireline Competition Bureau neither directed that such fields be implemented, nor barred their implementation; instead, it remanded the issue to the NANC. In any event, the Wireline Competition Bureau’s February 4, 2008 letter plainly neither makes a necessity finding nor waives NANC’s obligation to make such a determination pursuant to the terms of Rule 52.25(f).

**Issue 3: Can a Local Number Portability Working Group (“LNPA WG”) finding that information is necessary to route telephone calls to the appropriate telecommunications carrier substitute for such a finding by the NANC under 47 C.F.R. § 52.25(f)?**

The core of NeuStar’s procedural arguments is that the LNPA WG can act in lieu of the NANC in making a finding that specified information is “necessary to route telephone calls to the appropriate telecommunications carrier,” and thus can be placed in the NPAC.<sup>20</sup> But this position cannot be reconciled with the plain language of Rule

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<sup>16</sup> In fact, NeuStar asserts that there has never been any instance of NANC making a necessity finding – but of course fails to examine whether necessity was challenged for any fields other than Change Order 400, and the issue was not resolved by consensus.

<sup>17</sup> Letter from Robert C. Atkinson, Chair, NANC, to Thomas Navin, Acting Chief, Wireline Competition Bureau (July 5, 2005) *available at* [http://www.nanc-chair.org/docs/nowg/Jul05\\_Cover\\_Letter\\_to\\_Change\\_Orders\\_399-400.doc](http://www.nanc-chair.org/docs/nowg/Jul05_Cover_Letter_to_Change_Orders_399-400.doc) (attached as Exhibit 2).

<sup>18</sup> NeuStar Comment at 7.

<sup>19</sup> *See* Letter from Dana R. Shaffer, Chief, Wireline Competition Bureau, to Thomas Koutsky, Chair, NANC (Feb. 4, 2008), *available at* [http://www.nanc-chair.org/docs/mtg\\_docs/Change\\_Order\\_400.pdf](http://www.nanc-chair.org/docs/mtg_docs/Change_Order_400.pdf) (attached as Exhibit 3).

<sup>20</sup> *See* NeuStar Comments at 6-7, 8.

52.25(f), with NANC's Operating Principles, or with the Federal Advisory Committee Act.

Rule 52.25(f) specifically assigns to NANC the task of determining what information is "necessary to route telephone calls to the appropriate telecommunications carrier." The rule does not give NANC the option to delegate its responsibilities to a subgroup to make a final determination. Nor does NANC's GSA-approved charter provide for such a delegation.

NANC's operating principles also reflect that NANC reserves its final authority to itself. Those principles specify that NANC's working groups, including the LNPA WG, "develop draft recommendations for NANC consideration" that NANC can "accept, reject, change, or remand back to the Working Group with additional direction."<sup>21</sup> Nowhere do those principles state that the working groups act in lieu of NANC, particularly when, as here, no exigent circumstances preclude waiting for NANC to make a final determination.<sup>22</sup>

NeuStar's assertion that the LNPA WG acts for the NANC would also violate the Federal Advisory Committee Act.<sup>23</sup> When the FCC formed the NANC, it expressly considered whether the NANC must be chartered and operated pursuant to the Federal Advisory Committee Act, and concluded that it was.<sup>24</sup> Were the LNPA WG to act in NANC's stead, the LNPA WG would necessarily also be required to be chartered and operated pursuant to the FACA, just like the NANC.

It is undisputable that the LNPA WG does not operate under the FACA. The LNPA WG has no GSA-approved charter. It does not announce its meetings in the Federal Register. It does not ensure that the Designated Federal Officer, or her designee, attends all meetings. Nor does it necessarily meet all of the FACA's substantive

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<sup>21</sup> NANC Guidelines and Operating Principles, at 7 (Apr. 17, 2001), available at <http://www.nanc-chair.org/docs/nancguidelines.doc>.

<sup>22</sup> In any event, if there were exigent circumstances, NANC could convene a telephonic meeting – as it did for Change Order 400.

<sup>23</sup> See, e.g., *Ass'n of Am. Physicians & Surgeons, Inc. v. Clinton*, 997 F.2d 898, 903-04, 911-16 (D.C. Cir. 1993) (analyzing FACA's applicability to the President's Task Force on National Health Care Reform and its related interdepartmental working group).

<sup>24</sup> In the Matter of Administration of the North American Numbering Plan, CC Docket No. 92-237, FCC 95-283, 11 FCC Rcd 2588, 2611 ¶ 53 (1995) ("Given that this committee is essential for the Commission to develop the most effective number administration policies and that we seek from it advice reached by consensus, we conclude that the NANC is subject to FACA."); *id.* at 2610 ¶ 48 ("We further determine that the NANC must meet the requirements of the FACA because we will seek advice and recommendations from this council.") The FACA defines "advisory committee" to mean:

any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof. . . . established or utilized . . . in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government.

5 U.S.C. App. § 3 (emphasis added). FACA exempts "any committee which is composed wholly of full-time officers of employees of the Federal Government," *id.* § 3(2)(iii); and an independently established committee operated by a private organization, *Ass'n of Am. Physicians & Surgeons*, 997 F.2d at 912 (citation omitted); neither of which apply to NANC or any of its working groups.

requirements, including, that it be “fairly balanced in terms of the points of view represented,” and “that precautions be taken to ensure that the advice and recommendations of the committee ‘will not be inappropriately influenced by . . . any special interest.’”<sup>25</sup> Because the LNPA WG does not comply with FACA, it cannot claim to be acting in the NANC’s stead – and, if it claims to have done so, its claims and any actions should be invalidated on that ground alone.

Finally, for similar reasons, to the extent that NeuStar is arguing that the NAPM LLC’s actions may substitute for a NANC necessity finding,<sup>26</sup> that argument also fails. In the first instance, NAPM is not NANC, and thus does not meet the plain terms of Rule 52.25(f). Furthermore, although NAPM is designated, on an interim basis, to “manage and oversee” the NPAC contracts, it does so only pursuant to NANC oversight.<sup>27</sup> The FCC – which certainly knew how to write “NANC” when it meant NANC and the “regional LLCs” when it meant those entities – plainly chose in Rule 52.25(f) to specify NANC, not NAPM, to make necessity findings.

Accordingly, neither the LNPA WG nor any other entity (other than NANC or the FCC) can make the findings required by Rule 52.25(f) that specific information was “necessary to route telephone calls to the appropriate telecommunications carrier.”

**Issue 4: Did the LNPA WG make a finding that the URI fields referenced in Change Orders 429, 430 and 435 are necessary to route telephone calls to the appropriate telecommunications carrier?**

Although the appropriate resolution of Issue 3 renders Issue 4 irrelevant, in the event that NANC or the Committee find it necessary to consider Issue 4, the record shows that the LNPA WG did *not* make a finding that the URI fields referenced in Change Orders 429, 430 and 435 are “necessary to route telephone calls to the appropriate telecommunications carrier.” No one actually argues that such a finding was made. The LNPA WG minutes confirm that the question of necessity itself was never called for consensus.<sup>28</sup> NeuStar instead merely argues that no finding was necessary – which, as discussed in Issues 1 and 3, cannot be reconciled with the words of Rule 52.25(f), and that LNPA WG general approval sufficed for any and all Change Orders, even those questioned under Rule 52.25(f). That position also cannot be squared with the plain text of the rule, or NANC’s procedures and principles.

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<sup>25</sup> 5 U.S.C. App. § 5(b)(2)-(3); *Administration of the North American Numbering Plan*, Report and Order, 11 FCC Rcd 2588, 2610 ¶ 48 (1995); *see also Ass’n of Am. Physicians & Surgeons*, 997 F.2d 898 at 903. As an example, the LNPA WG’s practice is to count votes or objections from telecommunications service providers only, but not from state regulators, NASUCA, or other affected third parties such as vendors. The LNPA WG is the only NANC working group to exclude vendors from voting.

<sup>26</sup> NeuStar Comments at 5-6; *see also* T-Mobile Comments at 2; NAPM *Ex Parte* Letter at 3, 6-7.

<sup>27</sup> 47 C.F.R. § 52.26(b)(2); *see also* T-Mobile Comments, at 2 (“The NAPM LLC has documented the primacy of the FCC and delegated NANC oversight and has explicitly acknowledged them in all of its contractual arrangements . . .”).

<sup>28</sup> *See* LNPA WG June 2008 Meeting Minutes, *available at* [http://www.npac.com/cmas/co\\_docs/06-08\\_LNPA\\_WG\\_Final\\_Minutes.doc](http://www.npac.com/cmas/co_docs/06-08_LNPA_WG_Final_Minutes.doc); LNPA WG July 2008 Meeting Minutes, *available at* [http://www.npac.com/cmas/co\\_docs/07-08\\_LNPA\\_WG\\_Final\\_Minutes.zip](http://www.npac.com/cmas/co_docs/07-08_LNPA_WG_Final_Minutes.zip).

Even assuming that the LNPA WG was permissibly acting in NANC's stead (which it cannot do), the fact that it never actually called the question on the issue of necessity means it could not have made any such finding. Under the NANC's procedures, working groups "use the consensus method for decision making."<sup>29</sup> But "any member who disputes the finding of a 'consensus' may bring their point of view to the next higher authority as a minority opinion" – with the next higher authority in the case of the working groups being the NANC.<sup>30</sup> Moreover, until a question is called and consensus (or lack thereof) reached, there is no way to determine whether "[u]nresolved substantive issues" need to be escalated through NANC teams from Task Forces, to Working Groups, to NANC itself.<sup>31</sup>

Accordingly, it is undisputed that the LNPA WG made no actual finding that the URI fields referenced in Change Orders 429, 430 and 435 were necessary to route telephone calls to the appropriate telecommunications carrier.

**Issue 5: Can the NANC approve URI fields for inclusion in the NPAC database if the fields are not strictly necessary to route telephone calls to the appropriate telecommunications carrier?**

NANC may not approve data for inclusion in the NPAC database unless it finds that the data is "necessary to route telephone calls to the appropriate telecommunications carrier." Although various proponents of the Change Orders 429, 430 and 435 criticize Telcordia's interpretation of necessity as too narrow, none actually articulates a standard for how necessity should be judged. Telcordia suggests a simple "but for" standard: When adjudicating a dispute about adding fields to the NPAC, NANC must determine whether telephone calls to ported numbers can be routed without diminishing quality or function but for the addition of a challenged field to the NPAC.

This standard reflects the Commission's express limitation on the scope of the NPAC database. "We believe that, at this time, the information contained in the number portability regional databases should be limited to the information necessary to route telephone calls to the appropriate service providers."<sup>32</sup> It charged NANC with determining "the specific information necessary to provide number portability."<sup>33</sup> And it emphasized the limited purpose of the NPAC when it identified certain data that would fall outside the scope of the database. "To include, for example, the information necessary to provide E911 services or proprietary customer-specific information would complicate the functions of the number portability databases and impose requirements that may have varied impacts on different localities."<sup>34</sup>

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<sup>29</sup> NANC Guidelines and Operating Principles at 12.

<sup>30</sup> NANC Operating Manual, Version 2, at 8.

<sup>31</sup> NANC Guidelines and Operating Principles at 12 (directing working groups to escalate "[u]nresolved substantive issues" to the NANC for decision).

<sup>32</sup> *Telephone Number Portability*, First Report and Order and Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8403 ¶ 99 (1996) ("Telephone Number Portability Order").

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

NeuStar and Comptel essentially argue that “necessary” should be understood to encompass any data that might be “used” or “useful” to route calls.<sup>35</sup> But this misreads the FCC rules. The meaning of “necessary” “[depends] on its statutory context.”<sup>36</sup> When used to create a limitation, as here, “[s]omething is *necessary* if it is *required* or *indispensable* to achieve a certain result and not merely ‘used or useful.’”<sup>37</sup> Evaluating the FCC’s interpretation of the term “necessary” in a different provision of 47 U.S.C. § 251, the Supreme Court concluded “the [Telecommunications] Act [of 1996] requires the FCC to apply *some* limiting standard, rationally related to the goals of the Act.”<sup>38</sup> The same is true here: in the number portability context, the rule cannot be fairly read to permit the inclusion in the NPAC of any data that may be used or useful in routing. For this reason, Comptel’s argument that Rule 52.25(f) permits inclusion of these URIs in the NPAC because URIs are used to route calls sweeps too broadly.

Moreover, the Change Order proponents wholly ignore a crucial feature of the number portability regime: NPAC is not an ordinary private commercial routing database. Instead, NPAC is a unique, government-mandated database in which all carriers and interconnected VoIP providers are required to participate and for which they all must bear the costs by FCC rule. This means that even usage costs for optional URI fields are recovered from the industry as a whole, and not just from those carriers who use the URIs. This not only raises a number-policy and consumer-impact question – as many carriers pass these charges on to consumers – but also creates substantial cross-subsidy. In addition, NAPM’s contracting decisions have insulated the single supplier of NPAC services from competition – there is only one supplier of these government-mandated, compulsorily-funded NPAC services and that supplier will hold a *de facto* monopoly until such time as the NAPM enters into contracts with NPAC database vendors in addition to NeuStar.<sup>39</sup> The NPAC therefore appropriately is a database of limited scope. Rule 52.25(f) functions to separate those components that must be placed in the NPAC in order for number porting to work – those necessary to route telephone calls to the appropriate telecommunications carrier – from those that are not necessary to be in the NPAC database for correct routing to ported numbers to occur.

For this reason, Comptel’s argument that Rule 52.25(f) does not require that the information be necessary to be placed in NPAC must also be rejected. Under Comptel’s reasoning, any call routing information can be placed in the monopoly NPAC, even if the call routing information can and is provisioned in competitive markets today outside of the NPAC – as is the case with IP routing information. But Comptel provides no reason

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<sup>35</sup> See NeuStar Comments at 12 (discussing how the URI fields “permit the routing of services other than traditional PSTN services”); Comptel Comments at 2.

<sup>36</sup> *Cellco P’ship, Inc. v. FCC*, 357 F.3d 88, 97 (D.C. Cir. 2004).

<sup>37</sup> *GTE Serv. Corp. v. FCC*, 205 F.3d 416, 422-23 (D.C. Cir. 2000).

<sup>38</sup> *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 388 (1999) (rejecting the Commission’s flexible interpretation of “necessary” regarding § 251(d)’s network access provision).

<sup>39</sup> T-Mobile raises a red herring with respect to Telcordia’s LERG™ Routing Guide, which is a private product unrelated to any of the issues in this dispute. See T-Mobile Comments at 4. Unlike NPAC, however, the LERG operates in a competitive market. There is no FCC rule compelling use of the LERG, and the LERG is funded by carriers’ private contracts with Telcordia, not through a government-mandated tax-like collection mechanism. Carriers cannot be fined by the FCC for not paying Telcordia’s bills, but they can be fined for not paying NeuStar’s NPAC bills.

why the NPAC – established, run and funded pursuant to government mandate – should be allowed to “mission creep” into areas that are already provisioned by the competitive market.<sup>40</sup> This is especially true when the FCC-mandated cost recovery mechanism means that the costs of these URI fields – including all of NeuStar’s joint and common costs – will be borne by all carriers, whether or not they opt to use the new fields.

In any event, the question of whether NPAC should be permitted to extend its reach beyond information that must be placed in the NPAC to ensure that porting works without disrupting telephone calls is a question that raises serious and substantial “policy, regulatory or consumer impact”<sup>41</sup> issues that can be resolved only by the FCC, with recommendations from NANC should those be provided. Absent further FCC guidance, NANC must construe Rule 52.25(f) narrowly in order to honor the FCC’s express intent to limit the scope of the NPAC.

Change Order proponents also argue that Rule 52.25(f) cannot mean what it says because the database already includes fields to support CLASS functionalities, LIDB, Calling Name and Inter-Switch Voice Messaging Message Waiting Indicators, as well as some existing fields to support SMS.<sup>42</sup> But the FCC articulated the scope of the number portability mandate in its rules, clearly distinguishing between “network services, features and capabilities *existing at the time number portability is implemented*,” such as CLASS features, and those introduced at a later date.<sup>43</sup> As described in the consensus portion of the NANC Report on Change Order 400, the fields added when wireline or wireless number portability (or later pooling) was implemented served to ensure that porting (or later, pooling) would not break or impair those *existing* services.<sup>44</sup> In each case, services in widespread use would have ceased to function but for the addition of the fields, thereby creating an immediate disincentive to port numbers.<sup>45</sup>

Adding fields to the NPAC database is no longer the solution to the problem of existing service impairment. As discussed in the response to Issue 6, standards-setting organizations such as IETF and ATIS have expressly addressed number porting as part of their standards for next generation network services, so URI fields do not need to be added to the NPAC to fix any broken services.<sup>46</sup> That is a very different situation than when fields are being proposed to be added more than ten years later, when they are

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<sup>40</sup> Moreover, Comptel misreads the *Number Portability First Report and Order* to suggest that the FCC meant for the NPAC to be a one-stop call routing uber-database. The FCC said nothing for the sort. The FCC said long term number portability should “not require telecommunications carriers to rely on databases, other network facilities, or services *provided by other telecommunications carriers* in order to route calls to the proper termination point.” Telephone Number Portability, 11 FCC Rcd 8352, 8378 (1996) (emphasis added). The FCC’s focus was reliance on other carriers facilities, including databases, not reliance on other databases not provided by another carrier. As the FCC explained, it sought to “ensure that carriers have the ability to route telephone calls and provide services to their customers independently from the networks of other carriers.” *Id.* at 8380 ¶ 53. Nothing about leaving the monopoly NPAC separate from competitive ENUM databases contravenes these principles of the *First Report and Order*.

<sup>41</sup> Navin Letter, *supra* note 14.

<sup>42</sup> NeuStar Comments at 11; T-Mobile Comments at 2.

<sup>43</sup> 47 C.F.R. § 52.23(a)(1) (emphasis added).

<sup>44</sup> NANC Report on Change Order 400 at 7.

<sup>45</sup> *Id.*

<sup>46</sup> See discussion *infra* Issue 6.

being designed to operate in a porting environment, and can do so without placing these URI fields in the NPAC. In this context, Rule 52.25(f) need not be construed beyond its plain words.

SMS provides a relevant illustration. SMS was an existing service when wireless number portability was implemented. Because number porting might have impaired SMS service, an SMS DPC field was added in Release 2 of NPAC to help ensure that SMS messages could be routed to ported/pooled customers. With that addition, SMS services have worked in a ported environment. The current proposal to add another SMS URI field through Change Order 435, however, is not due to the service being impaired or broken but rather to allow service providers an added-value option for a future ENUM route for SMS.

This added-value data is exactly the kind of information that the Commission envisioned separate, non-NPAC, downstream databases providing when it said that individual carriers “may download information necessary to provide number portability from the regional databases into their own databases,”<sup>47</sup> and then “may mix information needed to provide other services or functions with the information downloaded.”<sup>48</sup>

The Commission’s *Interconnected VoIP Porting Order* does not dictate or even suggest a contrary reading of Rule 52.25(f), and the Change Order proponents read too much into the Commission’s statements in that order.<sup>49</sup> In that Order, the Commission was addressing whether it had the authority to apply a number porting requirement to interconnected VoIP providers, not whether it was necessary to expand the scope of the number portability database in order to support such porting. Certainly, if adding interconnected VoIP providers disrupted services, that would need to be addressed. But nothing indicates that imposing number portability obligations on interconnected VoIP providers disrupts services or creates any problem that must be solved by adding fields to the NPAC. All of this leads to the conclusion that, other than in the very limited circumstances of broken pre-existing services that are not applicable here, NANC cannot approve the inclusion in NPAC of information that is not necessary to be included in order to route telephone calls to the appropriate telecommunications carrier.

One other point needs to be addressed, although it need only be reached if the NANC concludes that the disputed fields are necessary to route the disputed communications to the appropriate telecommunications carriers. Proponents argue that the term “telephone call” in Rule 52.25(f) is an elastic term, citing the use of the “telephone calls” in statutes such as the Telephone Consumer Protection Act (TCPA). But the TCPA is a different statute, with a different purpose and different rules, than Rule 52.25(f). In the TCPA, Congress specifically prohibited a “call” using an autodialer or artificial or pre-recorded voice to “any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service or other radio common carrier service, or *any service for which the called party is charged for the call.*”<sup>50</sup> SMS and

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<sup>47</sup> 47 C.F.R. § 52.25(i).

<sup>48</sup> *Id.*

<sup>49</sup> *See, e.g.*, T-Mobile Comments at 4.

<sup>50</sup> 47 U.S.C. § 227(b)(1)(A)(iii).

MMS are both clearly services for which the called party is charged for the receipt of the communication. In that statutory context, effecting Congress' purpose required a definition of "calls" that included both voice and text.<sup>51</sup> The interpretation of the word "calls" in portions of the statute where Congress clearly intended an expansive reading does not, as proponents suggest, guide the interpretation in a rule where Congress permitted and the Commission created a rule of limitation.

The provisions of the NAPM/NeuStar Master Agreement, adopted through Amendment 62, also should not guide the interpretation of the Commission's rule.<sup>52</sup> This definition, which was adopted without any NANC or FCC review or approval – and in fact was disclosed to the NANC only in the NAPM report at the last NANC meeting –, is entirely self-serving. In any event, Telcordia has separately challenged the lawfulness and appropriateness of Amendment 62, on which the Commission is currently seeking comment.<sup>53</sup>

**Issue 6: Are the URI fields referenced in Change Orders 429, 430 and 435 necessary to route telephone calls to the appropriate telecommunications carrier?**

The URI fields in Change Orders 429, 430 and 435 are not "necessary to route telephone calls to the appropriate telecommunications carrier." Applying the simple but-for standard Telcordia proposes makes this clear. The record contains no evidence that any service will lose quality or function by porting if these URI fields are not included in the NPAC. Still less is there any evidence of services being truly broken – e.g., dropped calls, undeliverable text messages – by porting. None of the commenters asserts otherwise. At most, NeuStar and NAPM contend that including these "optional" fields in the NPAC database will be "efficient." But even as to this, the record is not at all developed because of the procedural shortcuts that were taken. In any event, efficiency alone does not meet the Rule 52.25(f) standard for inclusion in the NPAC database if there is no necessity.

In fact, including these URI fields in the NPAC database actually may impede the efficient routing of next generation traffic. IP-based services presently expect ported

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<sup>51</sup> See In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, FCC 03-153, 18 FCC Rcd 14014, 14115 (2003). A similar distinction applies to the restrictions on "dial-a-porn" solicitations, where Congress clearly intended an expansive reading of its prohibition on using a telephone to make "obscene communication for commercial purposes to any person." 47 U.S.C. § 223(b)(1). Congress likewise adopted expansive consumer protections in its CPNI privacy protections. Notably, however, the FCC extended CPNI restrictions to interconnected VoIP providers only after determining that interconnected VoIP functions as a telecommunications service. Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, 22 FCC Rcd 6927, 6956-57 (2007).

<sup>52</sup> Cf. T-Mobile Comments at 2.

<sup>53</sup> 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 (May 20, 2009) ("Telcordia Petition"); see also *Wireline Competition Bureau Seeks Comment on Telcordia Petition 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*, Public Notice, DA 09-1762 (rel. Aug. 6, 2009).

number data to be PSTN data (a service provider identity or a routing number), and thus already accommodate porting and can route calls based on an optimized routing algorithm using port-corrected data without placing additional data fields in the monopoly NPAC database.<sup>54</sup> These are some of the standards that form the basis of systems in worldwide use and enable VoIP, SMS, and MMS services to and from ported numbers.

In addition, as reflected in the June 2005 NANC Report on Change Order 400, the industry has been addressing the issues of routing for IP communications through ENUM:

Both the ATIS (Alliance for Telecommunications Solutions) PTSC (Packet Technologies and Systems Committee) and the Country Code 1 ENUM LLC indicated in their liaison responses to the LNPA (see Section 6.0) that, in addressing the problem of routing and addressing across an IP NNI, they were focusing on ENUM and did not see a need for URIs in the NPAC.<sup>55</sup>

Provisioning these URI fields in the NPAC database, when the services are already routing via ENUM databases, is not only unnecessary and redundant, but also poses significant danger of confusion and inconsistent data.

These Change Orders have been pending since 2005. In that four-year period, no one has presented any evidence that the absence of these fields caused or will cause a break in any service. In fact, the record suggests such a claim would fail. As discussed in the response to Issue 5, a field was added to the NPAC at the time wireless number portability was implemented so that SMS, a pre-existing service, would continue to operate in a porting environment. Since that time, the record reflects no service breakage that these new fields would address. The NANC Report on Change Order 400 reported in April 2005 that “at least one wireless service provider (Cingular) has indicated that it already can direct MMS messages to ported numbers without recourse to changes in the NPAC.”<sup>56</sup> Although including these URI fields in the NPAC database might arguably be appropriate if a service would otherwise break, absolutely no evidence here supports such a claim.

As noted in response to Issue 5 above, since the implementation of number portability more than ten years ago, the industry has continually developed standards for

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<sup>54</sup> See Internet Engineering Task Force (IETF), Network Working Group, Request for Comments 4769, *IANA Registration for an Enumservice Containing Public Switched Telephone Network (PSTN) Signaling Information* (Nov. 2006), available at <http://www.ietf.org/rfc/rfc4769.txt?number=4769>; Internet Engineering Task Force (IETF), Network Working Group, Request for Comments 4694, *Number Portability Parameters for the 'tel' URI* (Oct. 2006), available at <http://www.ietf.org/rfc/rfc4694.txt?number=4694>; Internet Engineering Task Force (IETF), Network Working Group, Request for Comments 3482, *Number Portability in the Global Switched Telephone Network (GSTN): An Overview* (Feb. 2003), available at <http://www.ietf.org/rfc/rfc3482.txt>. All of these proposed standards were drafted or co-drafted by NeuStar employees.

<sup>55</sup> NANC Report on Change Order 400 at 27.

<sup>56</sup> *Id.* at 28.

new services to work with current porting implementations. The industry has developed no new service standard that would require additional fields in NPAC in order to function. In fact, the standards at IETF, ATIS and other bodies for the new IP-based next generation services include specific requirements to allow for the port correction of the data using current implementations. Thus, concerns that LNP will not evolve without placing URI fields in the NPAC are unwarranted.

The four-year period during which the Change Orders were pending is important for another reason. There was no exigency for NAPM to move ahead before NANC could consider their change orders. No one has identified any valid reason for the LNPA WG to act without NANC first making a finding of necessity. Nor has anyone offered any justification for the rush. Even though NANC clearly had to meet imminently to consider porting intervals, NAPM and NeuStar issued change orders to ready downstream databases for the addition of these three disputed URI fields without waiting for NANC concurrence.<sup>57</sup> NeuStar then announced an accelerated “rollout schedule” to commercially implement these orders.<sup>58</sup> Their inexplicable haste suggests that they seek to make Change Orders 429, 430 and 435 a *fait accompli* before NANC or the Commission can review the legality of the orders.

NeuStar suggests that prohibiting these URI fields “can lead to transcoding and other errors that will only increase as other errors are deployed.”<sup>59</sup> But NeuStar provides no back-up for this naked assertion. In fact, the addition of these fields will not address, for example, the need to transcode some services from IP to TDM and then back to IP. ENUM systems available from multiple vendors, including NeuStar even before Amendment 72, facilitate the routing of both IP-to-IP and PSTN-to-IP traffic, without the need for these additional NPAC-based URI fields. As noted above, the standards for next generation services incorporate the requirements for delivering communications to ported numbers in current portability implementation. In addition, ATIS, which has worked on Next Generation Network infrastructure and performed a gap analysis of what additional items are needed for implementation of next generation networks, reports no gaps related to exchange of routing information for ported numbers.<sup>60</sup>

Finally, although T-Mobile is correct that there is no industry-wide mechanism for provisioning and synchronizing portability and pooled telephone numbers for non-PSTN uses, the addition of these URI fields to the NPAC does not provide such a mechanism. The Change Orders, as T-Mobile notes, only optionally add the data, and the NPAC is used only for ported and pooled numbers. Nowhere do Change Order proponents reconcile their contention that the fields are optional with their position that the fields are so critical that they are must be included in the NPAC. Even for service

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<sup>57</sup> See North American Portability Management (NAPM) LLC, Report to NANC (July 16, 2009), available at [http://www.nanc-chair.org/docs/mtg\\_docs/Jul09\\_NAPM\\_LLC\\_Report.doc](http://www.nanc-chair.org/docs/mtg_docs/Jul09_NAPM_LLC_Report.doc).

<sup>58</sup> See e-mail from Jessica Wagner, NeuStar, to NeuStar listserv, “US Regions: NPAC Point Release 3.3.3.5 and URI Fields Production Information” (May 29, 2009) (attached as Exhibit 4).

<sup>59</sup> NeuStar Comments at 17.

<sup>60</sup> “ATIS Next Generation Networks Part III- Gap Analysis,” May 2006, Alliance for Telecommunications Industry Solution, available at [http://www.atis.org/TOPSC/\\_NGN/Docs/Group%20Docs/NGN\\_Gap\\_Analysis\\_March2006.pdf](http://www.atis.org/TOPSC/_NGN/Docs/Group%20Docs/NGN_Gap_Analysis_March2006.pdf).

providers that choose to provision the data in NPAC, the NPAC URIs will be for only the part of their number inventory that is ported in or in pooled blocks for which they are not the underlying CO Code holder. While this might be the majority of inventory for some carriers, it is not for those that have a significant level of CO Code assignments or are in non-pooled (generally more rural) areas. In addition, because NPAC is just a provisioning database, the PSTN-based downstream systems (such as Signaling Control Points and Signal Transfer Points (STPs) that use NPAC for routing today would need to be modified significantly in order to gain any of the alleged routing efficiencies. Such modifications could only be used by switching systems that can make DNS resolutions of the URI data. Carrier ENUM systems theoretically could use this data to provision a portion of their client's URI data, but they would need to develop a full SMS capability to get the data directly from NPAC in order to receive only partial data that they could instead easily provision themselves from client-provided data and continue to provide port-corrected IP-routing data per the IETF standards in place today. In short, adding these URI fields to the NPAC does not deliver the benefits T-Mobile claims.

The plain fact is that the experience over the past four years shows that including these URI fields is not "necessary to route telephone calls to the appropriate telecommunications carrier." And while the impairment standard for portability implementation applied only to services existing at the time of implementation, all these types of communications – VoIP, MMS and SMS – are designed to and do route today to and from ported numbers without service degradation; thus, the URI data fields clearly are not necessary in NPAC. While it may be to NeuStar's commercial advantage to be able to leverage its NPAC monopoly into its ENUM offerings, that is not a basis for including these fields in the NPAC. Accordingly, Amendment 72 cannot meet the requirements of Rule 52.25(f).

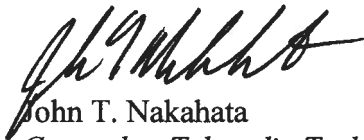
\* \* \*

For the reasons set forth above, Telcordia respectfully requests that the NANC find that:

- Change Order 429, 430 and 435 cannot lawfully be implemented unless and until NANC or the FCC makes a finding that they are “necessary to route telephone calls to the appropriate telecommunications carrier”;
- Neither NANC nor the FCC has made such a finding;
- Actions by the LNPA WG cannot substitute for necessity findings by NANC;
- The LNPA WG did not make a necessity finding;
- Data must be “necessary to route telephone calls to the appropriate telecommunications carrier” for inclusion in the NPAC database; and
- The URI fields referenced in Change Orders 429, 430 and 435 are *not* “necessary to route telephone calls to the appropriate telecommunications carrier.”

Therefore, Telcordia respectfully asks that the NANC find that Amendment 72 is invalid.

Sincerely,



John T. Nakahata  
*Counsel to Telcordia Technologies, Inc.*

cc: Julie Veach  
Jennifer Schneider  
Ann Stevens  
Marilyn Jones  
Melissa Kirkel

# Exhibit 1



Federal Communications Commission  
Washington, D.C. 20554

August 11, 2005

Mr. Robert C. Atkinson  
Chair, North American Numbering Council  
c/o Columbia Institute for Tele-Information  
Columbia Business School  
1A Uris Hall  
3022 Broadway  
New York, NY 10027-6902

Re: North American Numbering Council Change Order 399

Dear Mr. Atkinson:

Thank you for your correspondence dated July 5, 2005. As you are aware, earlier this year, the Commission directed the North American Portability Management LLC to hold in abeyance two proposed changes to the software utilized by the Number Portability Administration Center (NPAC) until it had an opportunity to consider the implications of the proposed changes. To assist the Commission in this consideration, the North American Numbering Council (NANC) submitted an extensive report to the Wireline Competition Bureau (Bureau) identifying and analyzing the policy, regulatory and consumer issues associated with the proposed changes. We are grateful to you and the NANC for all of your work on this matter, which was instrumental in our review.

The Bureau has reviewed the NANC's report and authorizes the NANC to proceed with its plans to have Change Order 399 included in the next NPAC software release. Specifically, we approve Change Order 399's proposal to add two data fields to each ported and pooled telephone number record. We agree that this does not have any policy, regulatory, or consumer impact on numbering issues, but allows the NPAC to function more efficiently. We are encouraged by the fact that the NANC reached a consensus on Change Order 399 and there is strong industry support for this change to the NPAC database. We emphasize that the Bureau's approval of Change Order 399 in no way predetermines the issue of access to numbering resources directly from the North American Numbering Plan Administrator or the Pooling Administrator by IP-enabled service providers.

I once again thank the NANC for all the hard work it put into this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Navin", written over the typed name and title.

Thomas J. Navin  
Chief  
Wireline Competition Bureau

## Exhibit 2

**North American Numbering Council**  
c/o Columbia Institute for Tele-Information  
Columbia Business School  
1A Uris Hall  
3022 Broadway  
New York, NY 10027-6902

July 5, 2005

Mr. Thomas Navin  
Acting Chief, Wireline Competition Bureau  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

RE: LNPA Change Orders 399 and 400

Dear Mr. Navin:

Earlier this year, the FCC directed the North American Number Portability Management (NAPM) LLC to hold in abeyance two proposed changes (LNPA Change Orders 399 and 400) to the software utilized by the Number Portability Administration Center (NPAC) until it had an opportunity to consider the implications of the proposed changes. To assist the Commission in this consideration, the Commission asked the North American Numbering Council (NANC) to identify and analyze the policy, regulatory and consumer issues associated with the proposed changes.

NANC directed the Future of Numbering Working Group (FoNWG) to conduct the requested review. The FoNWG provided an extensive report to NANC at the May 17, 2005 NANC meeting with the following results:

- Change Order 399

The FoNWG determined that Change Order 399 did not have any policy, regulatory or consumer impacts and recommended that it should be implemented. The full NANC agreed with the FoNWG recommendation. On behalf of NANC, I, therefore, recommend that the FCC should advise the NAPM LLC that Change Order 399 should no longer be held in abeyance.

- Change Order 400

The FoNWG was unable to reach a consensus recommendation with respect to Change Order 400. Therefore, NANC asked the FoNWG and other interested parties to expand the report to provide more extensive arguments in favor of and

opposing the proposed Change Order. The FoNWG submitted a revised report dated June 10, 2005 to the NANC, and the NANC had a duly noticed telephonic meeting on June 28, 2005 to consider the revised report.

I must report that neither the FoNWG nor NANC was able to reach a consensus recommendation with respect to Change Order 400. However, the FoNWG's extensive report, which is attached, outlines the issues and arguments in great detail and should assist the Commission in reaching a decision with respect to Change Order 400.

During the telephonic meeting on June 28, 2005, I reiterated my understanding that the Commission's previous directive to hold Change Order 400 in abeyance continues to apply until the Commission directs otherwise. This understanding was confirmed by the FCC's Designated Federal Officer participating in the meeting. I also communicated this status to all NANC Members on June 30, 2005.

I understand that there is a practical deadline associated with these Change Orders: the NAPM LLC needs to receive direction from the FCC by no later than August 1, 2005 in order for any change order to be included in the next release of NPAC software. I, therefore, urge the Commission to reach its decision as quickly as possible (not later than August 1, 2005) and promptly to communicate the decision to the NAPM LLC.

Finally, I should note that the FoNWG and NANC devoted extraordinary efforts to this matter. The Co-Chair of the FoNWG estimates that working group experts devoted a collective 800 hours to conference calls to consider the change orders. I would suspect that an equal amount of time was spent in preparation for the conference calls.

Please let me know if you or members of your staff have any questions or would like any clarifications.

Sincerely,

/Signed/

Robert C. Atkinson  
NANC Chair

Attachments

cc: Lisa Gelb, FCC  
Narda Jones, FCC  
Cheryl Callahan, FCC  
Regina Brown, FCC  
Marilyn Jones, FCC  
NANC Members

## Exhibit 3



Federal Communications Commission  
Washington, D.C. 20554

February 4, 2008

Mr. Thomas M. Koutsky  
Chair, North American Numbering Council  
c/o Phoenix Center for Advanced Legal and Economic Public Policy Studies  
5335 Wisconsin Avenue, NW  
Suite 440  
Washington, D.C. 20015

Dear Mr. Koutsky:

In 2004, NeuStar presented Change Order 400 to the Local Number Portability Administration (LNPA) Working Group. Change Order 400 proposes to add four new fields to each ported and pooled telephone number record in the Number Portability Administration Center (NPAC) database. Its purpose is to facilitate more efficient routing of calls to numbers that have been pooled or ported from one carrier to another.

In 2005, the Commission directed the North American Portability Management (NAPM) LLC to hold in abeyance Change Order 400, until it had a chance to consider the implications of the proposed change. To assist the Commission in this consideration, the Commission asked the North American Numbering Council (NANC) to identify and analyze the policy, regulatory, and consumer issues associated with the proposed change. The NANC directed the Future of Numbering Working Group (FoNWG) to conduct the requested review.

Neither the FoNWG nor the NANC was able to reach a consensus recommendation with respect to Change Order 400. The Commission recently adopted an order which took a number of steps designed to ensure the benefits of local number portability. In light of that order, the industry may reconsider Change Order 400 rather than continue to hold in abeyance its consideration.

Mr. Thomas M. Koutsky  
Phoenix Center for Advanced Legal and  
Economic Public Policy Studies  
Page 2

Please let me know if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dana R. Shaffer', with a long horizontal line extending to the right.

Dana R. Shaffer  
Chief  
Wireline Competition Bureau

Cc: Julie Veach, Deputy Chief, Wireline Competition Bureau, Room 5-C450  
Amy Bender, Legal Counsel, Wireline Competition Bureau, Room 5-C360  
Ann Stevens, Deputy Chief, Competition Policy Division, Wireline  
Competition Bureau, Room 5-C162  
Marilyn Jones, Designated Federal Officer to the NANC, Wireline Competition  
Bureau, Room 5-C264  
Melvin Clay, AT&T, Co-Chair, NAPM LLC  
Timothy Decker, Verizon Communications, Co-Chair, NAPM LLC

## Exhibit 4

## Exhibit A

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**From:** crossreg-bounces@listserv.neustar.biz [crossreg-bounces@listserv.neustar.biz] On Behalf Of Wangner, Jessica [Jessica.Wangner@neustar.biz]  
**Sent:** Thursday, May 21, 2009 4:31 PM  
**To:** crossreg@listserv.neustar.biz  
**Subject:** [Crossreg] US Regions: Approval of SOW 72 and NANC Change Orders

US NPAC Users,

The NAPM, LLC has approved SOW 72: Implementation of NANC 429, 430, and 435. This communication serves as the notification required to inform all Users of the SOW, and a brief description of each NANC change order.

A detailed implementation plan including details regarding the Testing and Roll-out dates for the production regions will be forthcoming.

### **NANC 429 – URI for Voice**

The NPAC/SMS will provide the ability to provision a Voice URI for each SV and Pooled Block record. This information will be provisioned by the SOA and broadcast to the LSMS upon activation of the SV or Pooled Block and upon modification for those SOA and LSMS associations optioned "on" to send and receive this data. This Optional Data field parameter shall be added to the Bulk Data Download file, and be available to a Service Provider's SOA, LSMS, or both. This parameter will be supported across the interface on an opt-in basis only and will be functionally backward compatible.

### **NANC 430 – URI for Multimedia Message Service (MMS)**

The NPAC/SMS will provide the ability to provision an MMS URI for each SV and Pooled Block record. This information will be provisioned by the SOA and broadcast to the LSMS upon activation of the SV or Pooled Block and upon modification for those SOA and LSMS associations optioned "on" to send and receive this data. This Optional Data field parameter shall be added to the Bulk Data Download file, and be available to a Service Provider's SOA, LSMS, or both. This parameter will be supported across the interface on an opt-in basis only and will be functionally backward compatible.

### **NANC 435 – URI for Short Message Service (SMS)**

The NPAC/SMS will provide the ability to provision an SMS URI for each SV and Pooled Block record. This information will be provisioned by the SOA and broadcast to the LSMS upon activation of the SV or Pooled Block and upon modification for those SOA and LSMS associations optioned "on" to send and receive this data. This Optional Data field parameter shall be added to the Bulk Data Download file, and be available to a Service Provider's SOA, LSMS, or both. This parameter will be supported across the interface on an opt-in basis only and will be functionally backward compatible.

If there are any questions regarding this notification, please contact me at the numbers below.

Thank you,

**Jessica B.F. Wangner: NeuStar, Inc.**

NPAC Service Management Analyst

46000 Center Oak Plaza Sterling, VA 20166

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/ [www.neustar.biz](http://www.neustar.biz)