

Report and
Recommendation on
Request of Telcordia
Technologies, Inc. to
Resolve Dispute
Concerning NANC
Change Orders
429, 430, and 435

Prepared by
North American Numbering Council

[DATE]

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Executive Summary

The North American Numbering Council ("NANC") herein addresses a request for resolution of a dispute concerning the decision by the North American Portability Management LLC ("NAPM") to adopt and execute Amendment 72 to the extent that it includes Change Orders NANC 429, 430, and 435. Change Orders 429, 430, and 435 provide for the inclusion in the Number Portability Administration Center ("NPAC") database and provision through that database of Uniform Resource Identifier ("URI") fields for Voice, Multimedia Messaging Service ("MMS"), and Short Messaging Service ("SMS").

The request was submitted by Telcordia Technologies, Inc. ("Telcordia") on May 26, 2009, pursuant to Section 52.26(b)(3) of the Federal Communications Commission ("FCC" or "Commission") rules.¹ Telcordia challenges the adoption of these change orders on both substantive and procedural grounds. Substantively, Telcordia argues that the change orders are defective because it believes that the URI fields do not meet with the Section 52.25(f) requirement that information in the number portability databases "shall be limited to the information necessary to route telephone calls to the appropriate telecommunications carriers."² Procedurally, Telcordia argues that the change orders are defective because neither the NANC nor the Commission made an express finding that the URIs constitute "necessary" information.³

The NANC has thoroughly reviewed Telcordia's arguments and has considered comment from numerous industry members and users of the NPAC database. Based upon this extensive record, the NANC has concluded that Telcordia's request should be dismissed and the URIs should be fully operational in the NPAC database. For the reasons discussed below, the change orders at issue are "necessary to route telephone calls," within the meaning and intention of the Commission. Statutory law and interpretations by the FCC and by courts make clear that the meanings ascribed to these terms by Telcordia are unduly narrow. Also, Telcordia's argument is at odds with the FCC's stated belief that "Congress's intent is that number portability be a 'dynamic concept'" that accommodates changes in communications technology and consumption.⁴ Furthermore, because of the NANC has now determined that the URI

¹ 47 C.F.R. § 52.26(b)(3)

² 47 C.F.R. § 52.25(f).

³ *Id.*

⁴ See *Telephone Number Requirements for IP-Enabled Services Providers*, WC Docket No. 07-243, *Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking*, 22 FCC Rcd 19,531, 19,544 ¶ 23 (2007) ("*Interconnected VoIP LNP Order*").

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fields are “necessary” within the meaning of Section 52.25(f), the procedural arguments of Telcordia are moot.

NANC recommends that the Commission approve of this dispute resolution, dismiss Telcordia’s pending Petition and Request for Standstill Order, as they relate to matters discussed herein, and allow the change orders at issue to remain in effect.

Section 1.0 Background

The present dispute concerns the inclusion into the NPAC by the NAPM LLC of three URI fields that were approved by the NANC’s Local Number Portability Administration Working Group (“LNPA WG”) in 2008. The three URIs are intended to facilitate efficient transmission of voice, MMS, and SMS communications between Internet Protocol (“IP”) based services by assisting in associating telephone numbers with the IP addresses of the destination device. The URIs will reduce the complexity of routing some IP-based communications and will also aid in billing. The change orders at issue are Change Orders NANC 429 (Voice), NANC 430 (MMS), and NANC 435 (SMS).

Change Orders 429 and 430 were originally included in Change Order 400, which was referred to the FCC by the NANC without recommendation in June of 2005.⁵ Although Change Order 400 was recommended for inclusion in the NPAC by the Local Number Portability Administration Working Group (“LNPA WG”),⁶ neither the NANC nor the Future of Numbering Working Group (“FoN WG”) reached consensus in favor of adopting the change order. The debate at the time concerned whether the URIs were properly within the scope of the NPAC.

In the beginning of 2005, the FCC directed the NAPM LLC to hold Change Order 400 in abeyance, pending its consideration of the implications of the proposed changes.⁷ However, in late 2007, the Commission adopted an order taking a number of steps intended to ensure that consumers continue to benefit from local number portability.⁸ Among other things, this Order clarified that the LNP rules should apply to interconnected Voice over Internet Protocol (“VoIP”) service providers. In light of this

⁵ See NANC Minutes (June 28, 2005) at 2-3, *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-260515A1.pdf.

⁶ LNPA WG, April 2005 Meeting, Final Minutes at 14.

⁷ See Letter from Thomas J. Navin, Chief, Wireline Competition Bureau to Robert C. Atkinson, Chair, North American Numbering Council (Aug. 11, 2005) *available at* http://www.nanc-chair.org/docs/nowg/Change_Order_399_Letter_from_WCB_Chief_8-11-05.pdf.

⁸ See *Interconnected VoIP LNP Order*.

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development, the Wireline Competition Bureau Chief informed the NANC that it could reconsider Change order 400 rather than continue to hold it in abeyance.⁹

In May 2008, the LNPA WG separated Change Order 400 into four separate change orders, including Change Order 429 for a Voice URI and Change Order 430, which addresses an MMS URI.¹⁰ One month later, the LNPA WG also added Change Order 435 to create a field for an SMS URI.¹¹ Ultimately, the LNPA WG reached consensus that three of the IP data parameters, *i.e.*, Change Orders 429, 430, and 435, should be forwarded to the NAPM LLC for consideration and inclusion in the NPAC. The NAPM LLC received the Change Orders, approved them, and asked the NPAC database administrator to include them in the NPAC via Amendment 72 to the Master Agreements.

In May 2009, Telcordia filed a Request for Dispute Resolution before the NANC, under Section 52.26(b)(3) of the FCC rules,¹² as well as a Petition and a Request for Standstill Order before the FCC.¹³ In its Request, Telcordia asserted that the Change Orders were improperly adopted by the LNPA WG because there was no express determination made by the NANC or the Commission that the fields being added to the NPAC database were “necessary to route telephone calls to the appropriate telecommunications carriers,” as required by Section 52.25(f) of the FCC rules.¹⁴ Additionally, Telcordia argues that because some of the URIs facilitate IP-based routing of “information services” and because voice, SMS, and MMS communications were being routed successfully without these URIs, these fields could not be considered “necessary” to the routing of “telephone calls.”

Pursuant to Section 52.11 and 52.26 of the FCC rules, the NANC initiated this formal dispute resolution process in July 2009. As discussed in more detail in Section 3.0 below, for more than a year since, a panel of NANC members has served as a Dispute

⁹ Letter from Dana R. Shaffer, Chief, Wireline Competition Bureau, to Thomas M. Koutsky, Chair, North American Numbering Council at 1 (Feb. 4, 2008).

¹⁰ LNPA WG, May 2008 Meeting, Final Minutes at 19.

¹¹ LNPA WG, June 2008 Meeting, Final Minutes at 4.

¹² See 47 C.F.R. § 52.26(b)(3).

¹³ See Letter from John Nakahata, Counsel to Telcordia Technologies, Inc., to Thomas Koutsky, Chairman, North American Numbering Council (filed May 26, 2009) (“*Telcordia Request*”); Petition of Telcordia Technologies, Inc. to Reform or Strike Amendment 70, to Institute a Competitive Bidding for Number Portability Administration, and to End the NAPM LLC’s Interim Role in Number Portability Administration Contract Management, WC Docket Nos. 07-149, 09-109 (filed May 20, 2009); Letter from John T. Nakahata, Counsel to Telcordia Technologies, Inc., to Julie Veach, Acting Chief, Wireline Competition Bureau, Federal Communications Commission, WCB Docket No. 07-149 (filed May 22, 2009).

¹⁴ See 47 C.F.R. § 52.25(f).

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Resolution Team to provide the NANC with an impartial and focused review of the dispute by participants that were not directly involved in the process of considering these three Change Orders. Initially the Team consisted of NANC Chair Thomas M. Koutsky, Chairman Betty Ann Kane of the Public Service Commission of the District of Columbia, and Don Gray of the Nebraska Public Service Commission. Upon the departure of Chairman Koutsky in August of 2009, members Kane and Gray carried on the task of investigating the dispute and composing a report and recommendation on the matter.

Section 2.0 Issues

Telcordia's Request for Dispute Resolution raises three primary issues.

- *First*, how should the NANC interpret and apply the phrase “necessary to route telephone calls to the appropriate telecommunications carrier,” as it is used in Section 52.25(f) of the FCC's rules?
- *Second*, are the URI fields added by Change Orders 429, 430, and 435 consistent with this interpretation?
- *Third*, is the long-established LNPA WG practice of considering and recommending Change Orders procedurally sound?

As is made clear in Section 4.0 below, having addressed the first two questions and made a determination that the fields at issue are necessary for telephone call routing, the third question is essentially mooted. However, to provide guidance and avoid future confusion, we still address the fundamental validity of the established change order process below.

Section 3.0 NANC Dispute Process

3.1 The Formal Dispute Process

The formal dispute resolution process with regard to number portability administration is set forward in Commission Rule 52.26(b)(3).¹⁵ That rule provides that “[t]he NANC shall provide ongoing oversight of number portability administration, including oversight of the regional LLCs, subject to Commission review.” Any party with an issue relating to number portability may seek to have that dispute addressed “under the auspices of the NANC” and the rule provides that in the event of a dispute, “the NANC shall issue a written report summarizing the positions of the parties and the basis for the recommendation adopted by the NANC.” The rule further provides that the “NANC Chair shall submit its proposed resolution of the disputed issue to the Chief of the Wireline Competition Bureau as a recommendation for Commission review,” that the FCC Wireline Competition Bureau “will place the NANC's proposed resolution on public notice,” and that within 90 days of conclusion of the FCC comment cycle, “the Chief of the Wireline Competition Bureau may issue an order adopting, modifying, or rejecting the recommendation.” If the Bureau takes no action within that time period, the NANC recommendation “will be deemed to have been adopted by the Bureau.”

3.2 Initial Scheduling and Comment Round

3.2.1 Initial Scheduling

¹⁵ 47 C.F.R. § 52.26(b)(3).

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After receiving Telcordia's Request for Dispute Resolution, former Chairman Koutsky initiated the formal dispute resolution process on July 7, 2009 through a memorandum to the NANC members. In that memorandum, Chairman Koutsky set forth the initial processes that would be followed and established a dispute resolution team composed of himself, NANC member Betty Ann Kane and NANC member Don Gray, who would review the request and make any appropriate recommendations for addressing the dispute. Shortly thereafter, Commissioner Kane and Mr. Gray outlined a schedule for the dispute resolution process including the receipt and review of written comments on the legal and factual questions raised by Telcordia and with a target of adopting a report and recommendation for submission to the Wireline Competition Bureau in the Fall of 2009. All written comments and other record submissions compiled during the course of the dispute resolution process were made publicly available online on a special section of the NANC Chair website, at <http://www.nanc-chair.org/docs/dispute.html>.

3.2.2 Comments Received – August 2009

In August 2009, the dispute resolution team received four written submissions responding to the Telcordia request. Of these four, three opposed the substantive and procedural arguments posed by Telcordia. The fourth was filed by Telcordia itself. Besides Telcordia, the on-the-record commenters were COMPTTEL, Neustar, and T-Mobile. With the exception of Telcordia, the commenters uniformly agreed that Telcordia's interpretation of Section 52.25(f) was inappropriately constrained. Moreover, these commenters uniformly supported inclusion of Change Orders 429, 430, and 435 to the NPAC database.

3.2.2.1 COMPTTEL Comments

On August 14, 2009, COMPTTEL submitted comments in which it asserted that the information provided by the three new URI fields is necessary for the routing of certain types of telephone calls and should be included in the NPAC database.¹⁶ COMPTTEL argued that Telcordia misinterpreted Section 52.25(f) to mean that the *inclusion* of the information in the NPAC must be necessary to route telephone calls. In reality, COMPTTEL asserts, Section 52.25(f) requires that the information added to the database be of the sort necessary to telephone call routing, regardless of whether its inclusion in the NPAC is the only viable means of providing the data.¹⁷ The information provided by the URIs at issue, according to COMPTTEL, satisfies this definition.

COMPTTEL also takes issue with Telcordia's claim that the URI fields for SMS and MMS are impermissible because these services do not constitute "telephone calls."

¹⁶ See Letter from Karen Reidy, Vice President, Regulatory Affairs, COMPTTEL, to Betty Ann Kane, Don Gray, and Thomas M. Koutsky, North American Numbering Council at 1 (filed August 14, 2009) available at http://www.nanc-chair.org/docs/mtg_docs/COMPTTEL_Comments_on_Telcordia_dispute.pdf ("COMPTTEL Comments").

¹⁷ *Id.* at 2.

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COMPTTEL points out that the FCC has interpreted the term "call" more expansively than traditional voice communications, and both the Commission and the courts have specifically indicated that SMS communications constitute a call, at least when made to a telephone number.¹⁸

3.2.2.2 Neustar Comments

On August 14, 2009, Neustar, the NPAC database administrator, filed comments opposing the arguments made by Telcordia. Neustar asserts that the procedural arguments made by Telcordia are baseless, and points out that the process followed with respect to Change Orders 429, 430, and 435—wherein the LNPA WG reached consensus on the change orders, recommended them to the NAPM LLC, and the NAPM LLC subsequently approved them for inclusion in the NPAC—resembles that followed in the case of hundreds of prior change orders with no previous complaints being filed. Neustar goes on to address the substantive arguments raised by Telcordia. Namely, Neustar asserts that precedent demonstrates that the term "telephone call" should be read broadly enough to encompass the SMS and MSS communications facilitated by the present change orders. Neustar also points out that there is long-established precedent for supporting non-voice call information services through the NPAC, such as Custom Local Area Signaling Services ("CLASS") and Line Information Data Bases ("LIDB"), including also fields to permit routing of Wireless SMS text messaging. Further, Neustar argues that Telcordia's narrow reading of the meaning of "necessary" to route telephone calls is refuted by the policies articulated in the FCC's LNP orders, including the Commission's policy in favor of promoting technological development.

3.2.2.3 T-Mobile Comments

T-Mobile USA Inc. ("T-Mobile") filed comments on August 17, 2009, in support of the validity of the change orders. T-Mobile asserts that the LNPA WG and NAPM LLC followed NANC Operating Principles and appropriate industry consensus and supermajority procedures in approving the NANC Change Orders. Like the other commenters, T-Mobile points out that the NPAC database has long supported ancillary services and that the Commission has expressed a belief that number portability is meant to be a "dynamic concept" that accommodates change. T-Mobile also refutes the competitive harms alleged by Telcordia. T-Mobile points out that NPAC data is available to all users on a competitively neutral basis, that Telcordia has already been selected as the sole provider of service provider ENUM services, and that implementation of the new parameters is optional for all vendors. T-Mobile argues that the URIs will enhance efficiency and competition in call routing.

¹⁸ *Id.* at 3-4 (citing *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd. 14014, 14115 (2003) ("TCPA Order"); *Satterfield v. Simon & Schuster*, 2009 WL 1708081 (9th Cir. Jun 19, 2009)).

3.2.2.4 Telcordia Response

In its August 31, 2009 Reply in support of its Request, Telcordia restates its position that the plain language of Section 52.25(f) supports its arguments and that there has been no demonstrations that the URIs at issue are necessary for successful routing of telephone calls. Telcordia asserts that the FCC rules and NANC's own Guidelines and Operating Principles make clear that an express determination of necessity must be made by NANC when the necessity of the information is called into question. Telcordia asserts that the word "necessary" must be interpreted to have some limiting effect, and that the positions of the other commenters would allow the NPAC to greatly exceed its intended mission and scope. Telcordia asserts that the reason that there are existing NPAC fields to support information services such as SMS is that these services predated number portability, and without their inclusion in the NPAC, portability would have "broken" these services. However, argues Telcordia, the present change orders do not "fix" any "broken" services, as these services can already be routed via ENUM databases, and thus the fields are not necessary.

3.3 FCC Docket 09-109

Prior to filing its Request for Dispute Resolution, Telcordia filed with the FCC on May 20, 2009 a Petition requesting, among other things, that the Commission intervene to prevent the NAPM LLC and the NPAC database administrator from activating the three change orders at issue here.¹⁹ On August 6, 2009, the Commission established Wireline Competition Bureau docket number 09-109, placed this petition on Public Notice, and requested comments and reply comments on this issue.²⁰ The Commission received a total of nine initial comments and six reply comments from a cross-section of interested parties. As these filings are not a part of the formal record in this dispute—and a substantial portion of Telcordia's petition and the responses it garnered focused on issues outside the scope of the present proceeding—they will not be fully reviewed herein. However, some general observations can be made.

Of the fifteen total comments and reply comments received by the Commission, thirteen opposed Telcordia's petition, one suggested that the Commission should institute a rulemaking proceeding to consider aspects of the petition, and the last filing was by Telcordia itself. Many of the arguments for and against the change orders were repeated in this proceeding and need not be reiterated here. Some commenters added to the discourse by highlighting the consumer and industry benefits of including these

¹⁹ See Petition of Telcordia Technologies, Inc. to Reform or Strike Amendment 70, to Institute a Competitive Bidding for Number Portability Administration, and to End the NAPM LLC's Interim Role in Number Portability Administration Contract Management (filed May 20, 2009).

²⁰ See *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, WC Docket No. 09-109, 24 FCC Rcd 10,271 (2009).

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URIs in the NPAC. For example, tw telecom asserted that “[b]y incorporating the IP Voice, MMS, and SMS URIs in the database already used for routing circuit-switched telephone calls, IP voice and text messaging traffic can be transmitted more efficiently and with fewer routing errors.”²¹ XO Communications LLC also pointed out the increased efficiency of including the URIs in the NPAC and asserted that “[c]arriers should be able to decide which IP routing option is the most efficient solution;” while “[r]esolution of this dispute as Telcordia requests could increase the costs of number portability to all carriers and slow the roll-out of new IP-based services that will benefit consumers and spur the competition envisioned by the Telecommunications Act of 1996.”²²

3.4 Interim Report and Second Comment Round

On May 21, 2010, in an effort to move towards resolution of this proceeding, Chairman Betty Ann Kane issued an interim update and status report in which the dispute resolution team discussed some of the legal and policy issues that would influence its decision in this matter.²³ The interim report also indicated that the NANC was continuing to accept comments from parties on the issues raised by Telcordia’s Request. Nine written filings from eight parties were subsequently received. Again here, the overwhelming majority of the submissions were wholly opposed to Telcordia’s request.

Among the parties commenting in opposition to Telcordia’s request in the most recent round of filings were the NAPM LLC, Neustar, COMPTTEL, a coalition of NPAC users including major wireless and wireline interests, and two state public utility commissions. Again, the only filings sympathetic to Telcordia’s request came from Telcordia itself and Comcast. Although the parties largely reiterated the arguments made earlier, several commenters, prompted by the Interim Report’s reference to four policy questions raised by the 2005 Future of Numbering Working Group Report and Recommendation on Change Orders 399 and 400, discussed the potential costs that would be imposed due to the population of the new URI fields upon NPAC users that choose not use the new fields. These commenters explained that due to move away from “transactional pricing” for porting transactions and the express elimination of any charges associated with creating and populating the new fields in the NPAC database under Amendments 70 and 72, there would be no appreciable increase in costs as a result of the addition of the URI fields.²⁴ The Connecticut Department of Public Utility Control and the Rhode Island

²¹ Reply Comments of tw telecom inc., WC Docket No. 09-109 at 5 (filed Sept. 29, 2009).

²² Comments of XO Communications LLC, WC Docket No. 09-109 at 2-3 (filed Sept. 8, 2009).

²³ See Letter from The Honorable Betty Ann Kane, Chairman, District of Columbia Public Service Commission, to the North American Numbering Council (May 21, 2010) *available at* http://www.nanc-chair.org/docs/May/May10_Telcordia_Interim_Report.doc.

²⁴ See, e.g., Letter from Melvin Clay and Timothy Decker, North American Portability Management LLC to the Honorable Betty Ann Kane and Don Gray, North American Numbering Council (filed July 29, 2010); Comcast Response to NANC at 2 (filed July 30, 2010).

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Public Utilities Commission also submitted comments expressing legal and policy support for a definition of “telephone call” that is broader than the one espoused by Telcordia.²⁵

²⁵ See Letter from Kimberley J. Santopietro, Executive Secretary, Connecticut Department of Public Utility Control, to the Honorable Betty Ann Kane and Don Gray, North American Numbering Council (filed August 16, 2010); Letter from Elia Germani, Chairman, Rhode Island Public Utilities Commission, to the Honorable Betty Ann Kane, Chairman, North American Numbering Council (filed Sept. 10, 2010).

Section 4.0 Analysis

Based on the extensive record discussed above, the NANC has conducted an analysis of the issues raised by Telcordia's Request for Dispute resolution and has determined that the addition to the NPAC database of the new URI fields through Change Orders 429, 430, and 435 were neither substantively nor procedurally defective.

4.1 The Adoption of the Change Orders Was Not Substantively Defective

As detailed below, our analysis leads us to the conclusion that the adoption of Change Order 429, 430, and 435 was not substantively defective, and the URIs at issue are "necessary to route telephone calls," as required by Section 52.25(f) of the Commission's rules.

4.1.1 Telcordia's Argument

The gist of Telcordia's substantive argument is that the URI fields at issue were inappropriate for addition to the NPAC database because they do not constitute information "necessary to route telephone calls."²⁶ Telcordia argues that the phrase telephone calls refers to voice-based telecommunications services switched between telecommunications providers. As SMS and MMS are information services, and the fields at issue are intended to facilitate IP-IP routing, Telcordia argues that they cannot be considered telephone calls. Moreover, Telcordia asserts that, even if the IP Voice, SMS, and MMS communications constitute telephone calls, the URI fields at issue here are not "necessary" to route them, as these communications are currently being routed successfully over the PSTN using the existing NPAC fields, and carrier ENUM databases will continue to facilitate IP routing of these communications.

4.1.2 IP Voice, SMS, and MMS Constitute "Telephone Calls"

We find that the term "telephone calls," as used by the Commission in 47 C.F.R. §52.25(f) includes both telecommunications services and information services, and thus is broad enough to encompass the communications facilitated by the URIs added to the NPAC database in Change Orders 429, 430, and 435.

The term "telephone calls" has been used to mean more than just basic voice transmission service on numerous occasions.²⁷ As numerous commenters pointed out,

²⁶ 47 C.F.R. § 52.25(f).

²⁷ See *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, 22 FCC Rcd 6927, 6956 ¶ 56 (2007); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11544 (1998) (Stevens Report) (deferring classification of "phone-to-phone" IP telephony" services).

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the Telecommunications Consumer Protection Act of 1991 ("TCPA"),²⁸ which protects consumers from various telemarketing practices, prohibits "telephone calls," which include the transmission of information services consisting of "artificial or prerecorded voice" messages to residential lines.²⁹ In implementing the TCPA, the FCC has expressly stated that the TCPA's prohibition on autodialed telephone calls "encompasses both voice calls and text calls to wireless numbers including, for example, short message service (SMS) calls."³⁰ Recent court opinions also support a broad interpretation of the term "telephone call." In particular, both the Ninth Circuit and the Arizona Supreme Court have held that the TCPA's prohibition on certain telemarketing calls extends to text messages.³¹

Additionally, the nature of the NPAC database itself supports a reading of Rule 52.25(f) that includes information services. Since its inception, the NPAC database has included fields related to information services. "Software Release 1.0" included fields associated with Inter-Switch Voice Messaging Message Waiting Indicating (ISVM MWI). "Software Release 2.0" added fields to permit routing of Wireless Short Message Service (SMS) text messaging.³² Both ISVM³³ and SMS³⁴ are clearly associated with information

²⁸ 47 U.S.C. § 227.

²⁹ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Request of ACA International for Clarification and Declaratory Ruling*, 23 FCC Rcd 559, 560 (2008); see also 47 C.F.R. § 64.1200 *et seq.*

³⁰ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd 14014, 14115 (2003); see also *Rules and Regulations Implementing and Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003; Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 19 FCC Rcd 15927, 15934 (2004) (stating that the "prohibition on using automatic telephone dialing systems to make calls to wireless phone numbers applies to text messages (e.g., phone-to-phone SMS), as well as voice calls").

³¹ See *Satterfield v. Simon & Schuster*, 2009 WL 1708081 (9th Cir. June 19, 2009); *Joffe v. Acacia Mortgage Corp.*, 211 Ariz. 325 (2006); see also *See, e.g., Lozano v. Twentieth Century Fox Film Corp.*, No. 09 CV 6344, 2010 WL 1197884 at * 8 (N.D. Ill. Mar. 23, 2010) ("The court agrees with the FCC's interpretation of section 227 of the TCPA applies to text messages Plaintiff has sufficiently alleged that the text message . . . constitutes a call for the purposes of the TCPA."); *Abbas v. Selling Source, LLC* No. 09 CV 3413, 2009 WL 4884471 at * 7 (N.D. Ill. Dec. 14, 2009) ("The court agrees with the FCC's interpretation that congressional findings and intent apply with equal force to SMS messages. The court concludes that an SMS message is a "call" within the meaning of the TCPA.").

³² *Report and Recommendation on NANC Change Orders 399 & 400, Future of Numbering Working Group* at 7 (June 10, 2005) (FoN WG Report).

³³ ISVM, a voice mail service provided on a centralized basis, is an information service. Like plain voice mail, this service allows users to store information and interact with stored information unrelated to the placing of a telephone call. These characteristics place voice mail, as well as electronic mail, firmly in the enhanced (information) service category. See *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, 84 FCC.2d 50, 54-55 (1980).

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services, yet delivery of these services has long been facilitated by fields in the NPAC database.

This definition of "telephone call" is also consistent with the one contained in the NAPM agreement. As T-Mobile and other commenters pointed out, the NAPM agreement defines "a call" as the transmission of information (video, pictures, audio/music, messages, text data or a combination of these) by use of messages or transmission of provisioning data associated with information sessions, subscribers and network equipment and devices (e.g., discovery, connection, presence, location, authentication, billing usage, maintenance, and parameter negotiation).³⁵ The term "routing" means transporting calls. For these purposes, Internet addresses and naming protocols (URLs, URIs, IP addresses, etc.) are considered call routing information {if} they are associated with a telephone number.

Based on the foregoing analysis, we determine that IP Voice, SMS, and MMS communications should all be considered "telephone calls" for the purposes of Section 52.25(f). These communications are each routed by means of telephone number addressing. Moreover, these services have become commonplace and customary functionalities of contemporary telephone-based communications. As explained by the Connecticut Department of Public Utility Control and the Rhode Island Public Utilities Commission, a narrower definition of "telephone call" as being limited only to traditional voice communications transmitted over the PSTN would undermine important law enforcement and consumer protection goals, including the prevention of telemarketer abuse and spamming.³⁶

4.1.3 The URIs Are "Necessary to Route Telephone Calls"

Having determined that IP Voice, SMS, and MMS communications constitute "telephone calls" for the purpose of LNP, it follows logically that the URIs at issue are "necessary to route telephone calls," as required by 47 C.F.R. § 52.25(f). Accordingly, we find that

³⁴ SMS is a store-and-forward method of transmitting messages to and from wireless devices. Store-and-forward technology is generally considered a characteristic of an information service. See, e.g., *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Further Notice of Proposed Rulemaking, 13 FCC Rcd 21531, 21533 (1998).

³⁵ See Letter from Anna Miller, T-Mobile USA, Inc., to the Honorable Betty Ann Kane, Don Gray and Thomas M. Koutsky (filed August 17, 2009) ("T-Mobile Comments") available at http://www.nanc-chair.org/docs/mtg_docs/T-Mobile_Letter_re_NANC_dispute_081709.pdf.

³⁶ Telcordia argues that the term "telephone calls" can have one meaning in one section of the rules and another meaning in a different area of the rules. See Letter from John Nakahata, Counsel for Telcordia, to the Honorable Betty Ann Kane and Don Gray (filed September 10, 2010) ("Telcordia Letter") available at http://www.nanc-chair.org/docs/mtg_docs/Telcordia_Letter_091010.pdf. We believe that this practice would be bound to lead to confusion and should be avoided where possible. As described above, the meaning of the term "telephone calls" in Section 52.25(f) should be consistent with the meanings in use by the courts and the industry.

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Telcordia's interpretation of the term "necessary" is overly restrictive and contrary to stated FCC policy.

4.1.3.1 Telcordia's Definition of "Necessary" is Unduly Constrained

The use of the term “necessary” was never intended to exclude alternative routing information. Read in context with the *First LNP Order*, which first articulated the rule, it is clear that the rule was designed to ensure that the database only contained information related to routing, as opposed to E911 or CPNI information, not to exclude information otherwise helpful to effectively and efficiently route telephone calls.

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. The NANC should determine the specific information necessary to provide number portability. 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. For instance, because different localities have adopted different emergency response systems, the regional databases would have to be configured in such a fashion as to provision the appropriate emergency information to each locality's particular system. Similarly, special systems would need to be developed to restrict access to proprietary customer-specific information. In either instance, the necessary programming to add such capabilities to the regional databases would complicate the functionality of those databases.³⁷

As explained in Neustar's comments, the quoted text above makes clear that the Commission's intention was not to limit the functionality of the LNP databases, but rather the commission was concerned with the databases becoming bloated with irrelevant data that might inadvertently impose locality-specific configurations and regulations on the regional databases, thereby unnecessarily complicating the process and potentially thwarting its smooth operation. This rationale does not apply to the URI fields at issue here.

Section 52.25(i)—which provides that “[i]ndividual carriers may mix information needed to provide other services or functions with the information downloaded from the regional databases at their own downstream databases”—also supports this reading of “necessary.”³⁸ This rule simply clarifies that although information that has nothing to do with routing generally—such as E911 and CPNI information—should not be included in the NPAC database, it still may be included in the downstream databases. Again, the *First LNP Order* is instructive. Therein, the Commission explained that this rule is

³⁷ *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, 11 FCC Rcd 8352, 8403-04 (1996) (“*First LNP Order*”).

³⁸ 47 C.F.R. § 52.25(i).

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intended to keep the LNP databases free from customer-specific, proprietary, and other information that is only relevant to separate services being offered by carriers, apart from call routing.

Because we require open access to the regional databases, it would be inequitable to require carriers to disseminate, by means of those databases, proprietary or customer-specific information. We therefore contemplate that the regional deployment of databases will permit individual carriers to own and operate their own downstream databases. These carrier-specific databases will allow individual carriers to provide number portability in conjunction with other functions and services. To the extent that individual carriers wish to mix information, proprietary or otherwise, necessary to provide other services or functions with the number portability data, they are free to do so at their downstream databases. We reiterate, however, that a carrier may not withhold any information necessary to provide number portability on the grounds that such data are combined with other information in its downstream database; it must furnish all information necessary to provide number portability to the regional databases as well as to its own downstream database.³⁹

The Commission's intent is further clarified by its flexible use of the term "necessary" in other rules. Contrary to Telcordia's argument that the Supreme Court's decision in *AT&T Corp. v. Iowa Utils. Bd.* limits the appropriate definition of "necessary," this decision only confirms the Commission's intent.⁴⁰ In *AT&T Corp. v. Iowa Utils. Bd.*,⁴¹ the U.S. Supreme Court rejected the FCC's "flexible" interpretation of the word "necessary" in the text of rules adopted at the same time as the Commission adopted Section 52.25(f). However, the Supreme Court opinion only stands for the proposition that the FCC may not interpret the word "necessary" in a limitless way under Section 251(d)(2) of the Communications Act. *Iowa Utils. Bd.* does not prescribe a specific meaning for "necessary" as used in Section 52.25 of the FCC's rules. Instead the case demonstrates that the FCC itself used the word "necessary" flexibly when it drafted rules in 1996 and 1997. As such, in 1996, when the FCC used the term "necessary," it plainly intended to use a flexible term.

Moreover, it has always been recognized that the concept of number portability—via the NPAC database—encompasses more than the mere routing of telephone calls. Appendix D to the LNPA WG Report, which has been codified in the Commission's rules, provides that NPAC users must be carriers or entities under contract with a carrier

³⁹ *First LNP Order*, at 8404.

⁴⁰ See Telcordia August 31, 2009 Reply at 12.

⁴¹ 525 U.S. 366, 388 (1999).

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“to provide billing, routing, and/or rating” services for that carrier.⁴² In order to achieve efficient number portability, the NPAC database must contain much information that is not strictly “necessary to route telephone calls” under Telcordia’s espoused definition.

4.1.3.2 Local Number Portability is a “Dynamic Concept”

The reconsideration of Change Order 400 was prompted by the Commission’s 2007 order extending LNP obligations to interconnected VoIP providers.⁴³ In that order the Commission made clear that facilitating the routing of IP to IP services is a proper function of the NPAC database. As various commenters have noted, in that order the Commission expressed an understanding that Congress intended consumers to retain the benefits of LNP as technology advances. The Commission stated that “to ensure that consumers retain this benefit as technology evolves, we continue to believe that Congress’s intent is that number portability be a “dynamic concept” that accommodates such changes Similarly, the Act provides ample authority for the logical extension of porting obligations due to technological changes in how telephone service is provided to end-user consumers.”⁴⁴ Given this statement of LNP policy, addition of the three IP URI fields at issue in the present dispute is a logical extension of the NPAC database.

Telcordia’s narrow interpretation of “necessary to route telephone calls” would prohibit the inclusion of *any* new technologies for the routing of telephone calls in the NPAC database because there will always exist the possibility of using the legacy circuit-switched network to facilitate routing.⁴⁵ Without the new URIs, many IP communications are capable of being routed by transcoding the data from its original IP format into the time division multiplexing (“TDM”) format used by circuit-switched networks, routing the call through the PSTN to the terminating provider, and finally retranscoding the data back to IP for delivery to the end user. However, as technology continues to advance, this process may create unforeseen complications, and it is irrefutably less efficient than performing direct IP to IP routing. This is plainly inconsistent with the FCC’s expression of the “dynamic concept” of LNP and its general policy favoring the rapid deployment of next-generation communications services.

Our analysis is informed by recent actions by the Commission to improve the convenience, efficiency, and service equivalency of LNP. For example, in light of technological development and other improvements, the Commission recently reduced the allowable porting interval for simple wireline and simple intermodal port requests

⁴² LNPA WG Report, App. D, § 12.2.4, incorporated in by reference in 47 C.F.R. § 52.26(a).

⁴³ See *Interconnected VoIP LNP Order*; Letter from Dana R. Shaffer, Chief, Wireline Competition Bureau, to Thomas M. Koutsky, Chair, North American Numbering Council (Feb. 4, 2008).

⁴⁴ *Interconnected VoIP LNP Order*, 22 FCC Rcd at 19,544, ¶ 23.

⁴⁵ See Telcordia Request at 13-14 (“All of these types of messages—IP-IP voice traffic, MMS and SMS—can be completed today using the NPAC only to identify the service provider ID associated with a ported number.”).

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from four business days to one business day.⁴⁶ In doing so, the Commission observed that “the telecommunications landscape has changed dramatically, and technological advances have enabled number porting to be accomplished in a much shorter time period.”⁴⁷ In light of these changes, the Commission determined that streamlining the LNP process was an appropriate way to strike the balance “between enabling consumers to realize the benefits of LNP and the current technological and business capabilities of service providers.”⁴⁸

The IP URIs at issue offer substantial consumer benefits in terms of improved call quality and expanded services. The FCC has stated that number portability should be provided “without impairment of quality, reliability, or convenience.”⁴⁹ As the NAPM LLC, Neustar, and the Joint Comments of the carriers point out, these URIs will be increasingly important to ensuring that new services are able to be delivered reliably to all users, and to enabling IP communications across different carrier networks. For example, in considering Change Order 435 on an IP SMS URI, the LNPA WG recognized that this field will be useful in facilitating the growth of SMS—traditionally a wireless-focused service—into the wireline world. As the WG explained “[t]he availability of the SMS URI will allow originating carriers to recognize SMS capable TNs so that IP based carriers delivering service to traditionally ‘landline’ numbers from wireless TNs can determine if the TN is SMS capable and use the URI for terminating network routing information.”⁵⁰ As such, the inclusion of these URIs in the NPAC will help promote service equivalency and will help ensure that users are able to seamlessly send and receive the communications in the form they expect, regardless of the destination network or device.

Based upon the above discussion, we conclude that the three IP URIs at issue here are an appropriate means of responding to the ongoing transition toward IP-based communications and promoting technological development. Moreover, we conclude that Commission policy envisions exactly this role for LNP. As such, we hereby determine that the information contained in Change Orders 429, 430, and 435 are “necessary to route telephone calls,” pursuant to Section 52.25(f) of the FCC rules.

4.2 Telcordia’s Procedural Arguments are Moot

Having determined that the Change Orders at issue are “necessary to route telephone calls,” the NANC finds that Telcordia’s procedural arguments are moot. The NANC

⁴⁶ See *Local Number Portability Porting Interval and Validation Requirements*, WC Docket No. 07-244, *Report and Order and Further Notice of Proposed Rulemaking*, 24 FCC Rcd 6084 (2009).

⁴⁷ *Id.* at 6087, ¶ 7.

⁴⁸ *Id.* at 6089, ¶ 7.

⁴⁹ *First LNP Order*, 11 FCC Rcd at 8366-67.

⁵⁰ Change Order 435, NANC LNPA WG.

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finding that the URIs in question are “necessary” obviates any need for further consideration of this issue by the LNPA WG or any other NANC working group.

Section 5.0 Conclusion and Recommendation

The NANC has reached the following conclusions regarding the three issues identified in Section 2.0, *supra*.

- *First*, the NANC rejects the unduly constrained definition ascribed by Telcordia to the phrase “necessary to route telephone calls to the appropriate telecommunications carrier,” as it is used in Section 52.25(f) of the FCC’s rules. Telcordia’s definition is contrary to established Congressional, FCC, and NANC policy. Instead, the NANC concludes that the definition of “call” used in the NAPM Agreement is more appropriate for the purposes of this case. And the word “necessary” must be interpreted consistent with the “dynamic concept” of LNP as defined by the FCC.
- *Second*, the URI fields added by Change Orders 429, 430, and 435 are consistent with the Section 52.25(f) requirement that information in the NPAC database be “necessary to route telephone calls.” These URIs will increase routing efficiency and facilitate the development of new IP based services, ensuring that consumers continue to enjoy the benefits of LNP.
- *Third and finally*, because the NANC has now determined that the URI fields are necessary within the meaning of Section 52.25(f), there can no longer be any concern on Telcordia’s part that the NANC never made such a finding with respect to these URIs. The procedural arguments made by Telcordia regarding the process through which these Change Orders were adopted are mooted by the substantive determinations made herein.

Pursuant to Section 52.26(b)(3) of the FCC rules, the NANC must make a recommendation for resolution of the present dispute for submission to the Chief of the Wireline Competition Bureau.⁵¹ In light of the foregoing, NANC hereby recommends that the Chief endorse the conclusions reached herein and allow the implementation and population of the new URIs to proceed unhindered. Moreover, to the extent that they pertain to the discrete issues discussed herein, the NANC recommends that the FCC dismiss the Petition and Standstill Request related to the implementation of Amendment 70, filed by Telcordia.⁵²

⁵¹ 47 C.F.R. § 52.26(b)(3).

⁵² See Petition of Telcordia Technologies, Inc. to Reform or Strike Amendment 70, to Institute a Competitive Bidding for Number Portability Administration, and to End the NAPM LLC’s Interim Role in Number Portability Administration Contract Management (filed May 20, 2009); Letter from John T.

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Nakahata, Counsel to Telcordia Technologies, Inc., to Julie Veach, Acting Chief, Wireline Competition Bureau, Federal Communications Commission, WCB Docket No. 07-149 (filed May 22, 2009).