Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
North American Numbering Plan Administration	)	CC Docket No. 92-237
	)	
	)	
Neustar Request for Clarification	)	

ORDER

Adopted: July 15, 2011 **Released: July 15, 2011**

By the Commission:

I. INTRODUCTION

1. In this Order, we modify the neutrality conditions placed on Neustar, Inc. (Neustar) in its role as the North American Numbering Plan Administrator (NANPA),[1] pursuant to a "Request for Clarification" from Neustar.[2] Specifically, we grant Neustar's request to eliminate the requirement contained in the *Safe Harbor Order*[3] that Neustar obtain prior Commission approval for any indebtedness that it issues to a telecommunications service provider (TSP) or TSP affiliate.[4] We find that this modification, subject to conditions described below, is appropriate because the requirement imposes a significant hardship on Neustar in connection with the issuance of debt and because the panoply of other protections that the Commission has in place are sufficient to ensure Neustar's continued neutrality.

II. BACKGROUND

2. Section 251(e) of the Communications Act of 1934, which was added by the Telecommunications Act of 1996,[5] required the Commission to designate an impartial numbering administrator to make telecommunications numbers available on an equitable basis.[6] Section 52.12 of the Commission's rules imposes a variety of restrictions on the North American Numbering Plan Administrator (NANPA) designed to ensure its neutrality.[7] Under the rules, Neustar (as the NANPA) is

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[1] Neustar also currently serves as the administrator for thousands-block number pooling and local number portability.

[2] *See* Letter from Scott Blake Harris, Executive Vice President, Legal and External Affairs, Neustar, Inc. to Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission (Apr. 6, 2011) (Neustar Request).

[3] *Request to Allow Certain Transactions Without Prior Approval and to Transfer Ownership,* CC Docket No. 92-237, Order, 19 FCC Rcd 16982 (2004) (*Safe Harbor Order).*

[4] *See* Neustar Request; *Safe Harbor Order*, 19 FCC Rcd at 16992, para. 26.

[5] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[6] 47 U.S.C. § 251(e).

[7] 47 C.F.R. § 52.12.

obligated to be "impartial and not aligned with any particular telecommunication industry segment."[8] In addition to a prohibition on Neustar being an affiliate of a TSP,[9] the rules also prohibit Neustar from deriving a majority of its revenues from a TSP or issuing a majority of its debt to a TSP.[10] Section 52.12 also provides that Neustar can be found to be subject to undue influence by parties with a vested interest in the outcome of numbering administration and activities, even if Neustar is compliant with the specific neutrality criteria set forth in sections 52.12(a)(i) and (ii).[11] Finally, section 52.13 of the Commission's rules requires Neustar to be "independent and impartial,"[12] and to "assign and administer NANP resources in an efficient, effective, fair, unbiased, and non-discriminatory manner…."[13]

3. In addition to the neutrality rules set out in section 52.12, the Commission, by order, has imposed additional requirements on Neustar to ensure it acts in a neutral and impartial fashion. In the *Warburg Transfer Order*, which authorized the transfer of the NANPA role to Neustar, the Commission imposed requirements that Neustar adhere to a Code of Conduct, hire an independent entity to conduct a neutrality audit of Neustar on a quarterly basis and provide the results to the Commission. The Commission established detailed criteria for the audit.[14] In the *Safe Harbor Order*, the Commission eliminated a variety of requirements in anticipation of Neustar's initial public offering,[15] but imposed others – including a prohibition on any TSP or TSP affiliate having a 5 percent or greater equity interest in Neustar,[16] a requirement that Neustar make available to the auditor conducting the quarterly impartiality audit any information in Neustar's possession relating to the identity of the record or beneficial owners of its shares,[17] a requirement that the officers and directors of Neustar certify to the auditor that they have no actual knowledge of any record or beneficial ownership of equity shares by a TSP or TSP affiliate, other than as disclosed to the auditor,[18] and a requirement that the majority of Neustar's Board shall consist of independent directors.[19] One of the requirements set forth in the *Safe Harbor* Order was that Neustar obtain prior Commission approval for the issuance of any indebtedness to a TSP or TSP affiliate, although prior approval for issuance to other entities was not required.[20]

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[8] 47 C.F.R. § 52.12(a)(1).

[9] 47 C.F.R. § 52.12(a)(1)(i).

[10] 47 C.F.R. § 52.12(a)(1)(ii).

[11] 47 C.F.R. § 52.12(a)(1)(iii).

[12] 47 C.F.R. § 52.13(a).

[13] 47 C.F.R. § 52.13(b).

[14] *In the Matter of Request of Lockheed Martin Corporation and Warburg, Pincus & Co. for Review of the Transfer of the Lockheed Martin Communications Industry Services Business,* CC Docket No. 92-237, Order, 14 FCC Rcd 19792, 19813-4, paras. 34-35 (1999) (*Warburg Transfer Order).*

[15] *See Safe Harbor Order,* 19 FCC Rcd at 16989-91, paras. 15-22.

[16] *Id.* at 16991, para. 22.

[17] *Id.* at 16992, para. 24.

[18] *Id.*

[19] *Id.* at 16992, para. 27.

[20] *Id.* at 16992, para. 26.

4. On April 6, 2011 Neustar filed a letter with the Commission seeking "confirmation" from the Commission that, consistent with section 52.12 of the Commission's rules, Neustar is permitted to issue debt without prior Commission approval, so long as Neustar does not issue a majority of its debt to a TSP.[21] Neustar states that the requirement contained in the *Safe Harbor Order* that it obtain Commission approval prior to any debt issuance to a TSP or TSP affiliate "impede[s] Neustar's access to capital and place[s] significant burdens on both Neustar and the Commission."[22] Neustar argues that "merely holding a company's debt generally provides no basis, on its own, for a debtholder to exert control over a company's operations,"[23] that the diversity of the telecommunications industry makes it hard to conceive how a TSP holding less than a majority of Neustar's debt could unduly favor or disadvantage a particular industry segment, consumer group or technology,[24] and that existing safeguards are sufficient to ensure Neustar's continued neutrality.[25]

5. On June 10, 2011 Neustar filed another letter with the Commission to explain the procedures it would implement to assure compliance with section 52.12(a)(1)(ii) of the Commission's rules should the Commission grant the Neustar Request.[26] Neustar explained in the Neustar Commitment Letter that on a quarterly basis it would review the known holders of its debt and determine which holders (if any) are TSPs. It would then confirm that no TSP holds more than 50 percent of its outstanding debt.[27] Neustar's procedures and findings in this regard would be confirmed by Ernst and Young as part of its quarterly audits of Neustar's neutrality.[28] Including these debt information and debt measurement tasks in the audit activities as Neustar suggests will ensure that the Commission and the North American Numbering Council (NANC)[29] will receive regular reports on Neustar's compliance. Finally, in the Neustar Commitment Letter Neustar agrees to immediately take steps to bring itself in compliance with section 52.12(a)(1)(ii) of the Commission's rules in the event that a quarterly review ever reveals that a TSP holds more 50 percent of its outstanding debt.[30]

[21] *See* Neustar Request at 8.

[22] *Id.* at 1.

[23] *Id.* at 3.

[24] *Id*. at 3-4.

[25] *Id.* at 6-8.

[26] *See* Letter from Scott Blake Harris, Executive Vice President, Legal and External Affairs, Neustar, Inc. to Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission (Jn. 10, 2011) (Neustar Commitment Letter).

[27] *Id*. at 1-2.

[28] *See Warburg Transfer Order* at 14 FCC Rcd at 19802, para.13.

[28] *Id.* at 1-2.

[29] The NANC was established by the Commission in 1995 for the purpose of advising the Commission on policy matters relating to the administration of the North American Numbering Plan. *See Administration of the North American Numbering Plan*, Report and Order, CC Docket 92-237, 11 FCC Rcd 2588, 2608 (1995).

[30] *Id.* at 2.

6. The Commission sought public comment on the Neustar Request.[31] No comments were received.

III. DISCUSSION

7. The NANP is the basic numbering scheme for telecommunications networks located throughout North America and elsewhere.[32] In order to ensure that numbering resources are made available on an equitable basis as required by the Communications Act,[33] it is vitally important that the NANPA be an impartial and neutral actor in the performance of its duties. However, we agree with Neustar that compliance with this paramount objective should not be unnecessarily burdensome on the NANPA. The question whether to grant Neustar's request turns on whether there are sufficient safeguards in place to ensure that Neustar will remain a neutral administrator of the NANP even if it is no longer required to seek prior Commission approval for any debt issuance to a TSP or TSP affiliate.[34] For the reasons discussed below, we find that sufficient safeguards will be in place to ensure Neustar's neutrality and therefore grant the requested relief. Although Neustar's request was styled as a "Request for Clarification," we do not consider the relief granted herein a clarification of the debt-related restrictions that have been applicable to Neustar. Rather, we are persuaded that the requirement contained in the *Safe Harbor Order* that Neustar obtain Commission approval before issuing any debt to a TSP or TSP affiliate imposes an unnecessary hardship on Neustar in connection with the issuance of debt. We also find that the remaining neutrality safeguards contained in the Commission's rules, the *Warburg Transfer Order,* the *Safe Harbor Order,* and the conditions adopted herein are sufficient to ensure Neustar's neutrality.

8. Neustar will continue to be prohibited under our rules from issuing greater than 50 percent of its debt to a TSP[35] and remains obligated under our rules to be impartial[36] and not subject to the "undue influence by parties with a vested interest in the outcome of numbering administration and activities."[37] In light of these protections and the prohibition against Neustar being an affiliate of a TSP,[38] we find it unnecessary to require pre-approval of any acquisition of Neustar debt by a TSP or a TSP affiliate. This is so because a TSP holding Neustar's debt could not cause Neustar to act in a biased fashion without creating a violation of our rules. Moreover, as the Commission recognized in the *Safe Harbor Order*, there is less need to monitor all transactions affecting Neustar's ownership, and it will be less likely that a particular TSP or TSP affiliate could exert control or influence over Neustar

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[31] *See Wireline Competition Bureau Seeks Comment on Neustar Request for Clarification Regarding Its Neutrality Requirements,* CC Docket No. 92-237, Public Notice, 26 FCC Rcd 5986 (2011).

[32] *See Administration of the North American Numbering Plan,* Report and Order, CC Docket No. 92-237, 11 FCC Rcd 2588,2608 (1995); *Warburg Transfer Order* at 14 FCC Rcd at note 7. The NANP is the basic numbering scheme for telecommunications networks located in Anguilla, Antigua, Bahamas, Bermuda, British Virgin Islands, Canada, Cayman Islands, Dominica, Dominican Republic, Grenada, Jamaica, Montserrat, St. Kitts & Nevis, St. Lucia, St. Vincent, Turks & Caicos Islands, Trinidad & Tobago, and the United States (including Puerto Rico, the U.S. Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands).

[33] 47 U.S.C. § 251(e).

[34] *See Safe Harbor Order,* 19 FCC Rcd at 16984, para. 5.

[35] 47 C.F.R. § 52.12(a).(1)(ii).

[36] 47 C.F.R. § 52.12(a)(1).

[37] 47 C.F.R. § 52.12(a)(1)(iii).

[38] 47 C.F.R. § 52.12(a)(1) (i).

without the Commission's knowledge, now that Neustar is publicly traded.[39] The reporting obligations imposed on Neustar as a public company subject it to transparency and oversight that make it easier for the Commission and interested parties to assess whether Neustar is acting in an impartial manner in connection with its role as the NANPA.[40] We also find credible Neustar's representation that this particular prior approval requirement has made it "increasingly challenging" to pursue debt financing and is "a significant commercial impediment."[41] For example, as Neustar explains, when the *Safe Harbor Order* was adopted in 2004 it was not a public company engaged in multiple lines of business. Other companies of its size, according to Neustar, take on debt in the ordinary course of business and engage in transactions that require billions in debt. Yet, Neustar explains, because of the need for a non-routine review process before an unfamiliar agency and ongoing restrictions against investing in TSPs, many financial entities have elected – and will continue to elect – not to deal with Neustar.[42]

9. Without a pre-approval requirement for all debt issuances that may involve a TSP or TSP affiliate, it is even more important that Neustar monitor the holders of its debt to ensure its continued compliance with section 52.12(a)(1)(ii) of our rules. Therefore, we adopt conditions of this approval which are along the lines of the commitments set forth in the Neustar Commitment Letter. Specifically, Neustar shall review quarterly the holders of its debt and determine which are TSPs. It will then validate that no TSP holds more than 50 percent of its outstanding debt. As part of the quarterly neutrality audits, the auditor will audit Neustar's procedures and findings, and confirm that no TSP holds more than 50 percent of Neustar's outstanding debt. Neustar shall also add this debt information and debt measurement task to the auditor's neutrality audit requirements and provide a revised version of the audit requirements to the Wireline Competition Bureau (Bureau) within 30 days of this Order. If at any time Neustar learns that a TSP holds greater than 50 percent of its outstanding debt, Neustar shall immediately notify the Commission as well as take immediate steps to bring itself into compliance with section 52.12(a)(1)(ii) of our rules.

10. In compliance with the Safe Harbor Order debt pre-approval requirement (which we are eliminating by this Order), Neustar has previously sought permission on multiple occasions to issue debt. The Bureau granted that permission, subject to conditions.[43] Because we herein eliminate the debt pre-approval requirement, the related pre-approval conditions we set forth in various letters approving prior debt transactions are no longer necessary or applicable. All other obligations imposed on Neustar by the Commission's rules and orders remain in effect. We note that we are not modifying the Commission's neutrality rules in section 52.12, and those requirements will ensure that the NANPA remains neutral.

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[39] *Id.* at 16990, para. 21.

[40] See *Safe Harbor Order* at 16990 (para. 21)

[41] Neustar Request at 6.

[42] *Id. at 5.*

[43] *See* Letter from Tom Navin, Chief, Wireline Competition Bureau, Federal Communications Commission, to Gerald J. Kovach, Senior Vice President, External Affairs, Neustar, Inc., CC Docket No. 92-237, Letter, 22 FCC Rcd 513 (2007); Letter from Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, to Gerald J. Kovach, Senior Vice President, External Affairs, Neustar, Inc., CC Docket No. 92-237, Letter, 25 FCC Rcd 15079 (Oct. 26, 2010); Letter from Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, to Gerald J. Kovach, Senior Vice President, External Affairs, Neustar, Inc. , (Oct. 27, 2010).

IV. ORDERING CLAUSES

11. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 251, that this ORDER IS ADOPTED.

12. It is FURTHER ORDERED that the request of Neustar, Inc., to amend its neutrality requirements regarding debt transactions, IS GRANTED, to the extent set forth herein and on the conditions herein set forth.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary