

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Telcordia Technologies, Inc. Petition to Reform	)	WC Docket No. 07-149
Amendment 57 and to Order a Competitive	)	
Bidding Process for Number Portability	)	
Administration	)	
	)	
Petition of Telcordia Technologies, Inc. to Reform	)	WC Docket No. 09-109
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	)	
	)	
Telephone Number Portability	)	CC Docket No. 95-116

**ORDER**

**Adopted: July 13, 2016**

**Released: July 25, 2016**

By the Commission: Commissioner O'Rielly concurring.

**I. INTRODUCTION**

1. In this order we dismiss the Application for Review (AFR) filed by Neustar, Inc. (Neustar),<sup>1</sup> which seeks reversal of the Wireline Competition Bureau's (WCB or Bureau) *Second Protective Order* in this proceeding.<sup>2</sup> While dismissing on procedural grounds, we also, in the alternative and as a separate and distinct ground, address and deny Neustar's substantive arguments on the merits. Additionally, we note that the parties to the proposed Master Services Agreement (MSA) between the North American Portability Management LLC (NAPM) and Telcordia Technologies, Inc., d/b/a iconectiv (Telcordia),<sup>3</sup> the subject matter of this application, have re-filed the contract with significantly fewer redactions, thereby providing the public with greater access to the MSA.<sup>4</sup>

<sup>1</sup> Application of Neustar, Inc. for Review of Second Protective Order (DA 16-344), WC Docket Nos. 07-149 and 09-109, CC Docket No. 95-155 (filed Apr. 11, 2016) (Neustar AFR or AFR).

<sup>2</sup> *Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration, et al.*, WC Docket Nos. 07-149 and 09-109, CC Docket No. 95-155, Second Protective Order, 31 FCC Rcd 2297 (WCB 2016) (*Second Protective Order*). Any capitalized terms not otherwise defined in this order shall have the meanings ascribed to them in the *Second Protective Order*.

<sup>3</sup> Letter from Todd D. Daubert, Counsel to the NAPM LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 07-149 and 09-109, CC Docket No. 95-116, Attachs. (filed Mar. 31, 2016 and refiled Apr. 25, 2016). The attachments, generally titled "Master Services Agreement for Number Portability Administration Center/Service Management System between Telcordia Technologies, Inc., and North American Portability Management LLC," consist of seven substantially similar contracts, each dealing with a separate region of the country (hereinafter referred to as the MSA or LNPA contract); *see also* Neustar AFR at 17.

<sup>4</sup> *See* Letter from Todd D. Daubert, Counsel to the NAPM LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 07-149 and 09-109, CC Docket No. 95-116, Attachs. (filed Apr. 25, 2016).

## II. BACKGROUND

2. On March 27, 2015, the Federal Communications Commission (Commission) released the *LNPA Selection Order*<sup>5</sup> approving the North American Numbering Council (NANC)<sup>6</sup> recommendation that Telcordia serve as the next LNPA, subject to certain conditions,<sup>7</sup> and authorizing the NAPM to negotiate a contract with Telcordia.<sup>8</sup> In addition, the *LNPA Selection Order* established a process and schedule to ensure the seamless and timely transition of the LNPA. Specifically, the Commission directed the NAPM to (1) negotiate a new contract with Telcordia for a database that is secure and reliable; (2) conduct outreach, education, and testing initiatives with stakeholders; (3) cooperate with other relevant federal agencies; (4) develop a Transition Oversight Plan (TOP); and (5) ensure that the transition to a new LNPA is overseen by experienced third parties.<sup>9</sup>

3. In addition, the Commission directed WCB, in consultation with the Public Safety and Homeland Security Bureau (PSHSB), to work with the NAPM to ensure that the LNPA contract supports effective public safety services, law enforcement and national security operations, and that national security issues are addressed and mitigated to our satisfaction.<sup>10</sup> Due to continuing concerns in this proceeding regarding the on-going need to protect confidential commercial and sensitive national security information, on March 31, 2016, WCB released a *Second Protective Order* that adopted procedures for reviewing the draft MSA. The *Second Protective Order* also imposed additional safeguards for reviewing sensitive national security and law enforcement aspects of the MSA, and those exhibits pertaining to such matters. As explained in the *Second Protective Order* when issued, the intent behind these safeguards was to provide appropriate access to the public while protecting competitively sensitive and law enforcement-national security sensitive information from improper disclosure.<sup>11</sup>

4. Within days of the release of the *Second Protective Order*, Neustar filed 20 signed Acknowledgments of Confidentiality seeking access to Confidential and Highly Confidential Information. In the accompanying cover letters, Neustar asserted that it “reserves the right to challenge the *Second Protective Order* and to seek relief from its terms.”<sup>12</sup> On April 11, 2016, Neustar filed its Application for

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<sup>5</sup> *In the Matter of Implementation of Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration, et al.*, WC Docket Nos. 07-149, 09-109, CC Docket 95-116, Order, 30 FCC Rcd 3082 (*LNPA Selection Order*).

<sup>6</sup> The NANC is the Commission’s Federal Advisory Committee for North American Numbering Plan number administration.

<sup>7</sup> *LNPA Selection Order* at 3083, para. 1.

<sup>8</sup> *Id.* at 3083, para. 3.

<sup>9</sup> *Id.* at 3150-51, paras. 158-59. The NAPM selected PricewaterhouseCoopers (PwC) as the Transition Oversight Manager (TOM). As such, PwC is considered to be a subgroup of the NAPM LLC.

<sup>10</sup> *Id.* at 3167, para. 194.

<sup>11</sup> *Second Protective Order* at 2298, para. 2.

<sup>12</sup> See Letter from Aaron M. Panner, Counsel to Neustar, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-149 et al., at 1 (filed Apr. 1, 2016); see also Letter from Aaron M. Panner, Counsel to Neustar, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-149 et al., at 1 (filed Apr. 5, 2016); Letter from Aaron M. Panner, Counsel to Neustar, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-149 et al., at 1 (filed Apr. 7, 2016); see also Letter from Aaron M. Panner, Counsel to Neustar, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-149 et al., at 1 (filed Apr. 11, 2016); Letter from Aaron M. Panner, Counsel to Neustar, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-149 et al., at 1 (filed Apr. 13, 2016). Neustar also filed an additional signed Acknowledgment of Confidentiality on May 10; in total, Neustar has filed 24 signed Acknowledgments of Confidentiality seeking access to the confidential and highly confidential portions of the MSA. See Letter from Aaron M. Panner, Counsel to Neustar, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-149 et al., at 1 (filed May 10, 2016).

Review of the *Second Protective Order* with the Commission.<sup>13</sup> On April 19, 2016, the Open Technology Institute at New America (OTI) and the LNP Alliance jointly filed an *ex parte* letter objecting to the confidential designations in the MSA and in support of the Neustar AFR.<sup>14</sup> Telcordia and the NAPM both filed Oppositions to the Neustar AFR on April 26, 2016.<sup>15</sup> Neustar filed its Reply on May 5, 2016.<sup>16</sup> In addition, on May 6, 2016, Telcordia filed a Motion to Strike the Neustar Reply, arguing that Neustar violated Section 1.115(f) of the Commission's rules by filing a reply in excess of five pages, without requesting a waiver of the rule, and that the Commission should "strike everything after page 5 of Neustar's reply."<sup>17</sup> On May 9, 2016, Neustar filed an Opposition to the Telcordia Motion to Strike.<sup>18</sup>

### III. DISCUSSION

5. **Procedural Issues.** The Wireline Competition Bureau issued its *Second Protective Order* on March 31, 2016, which set forth the following procedures for challenging the designation of a document with WCB. First, any person wishing to challenge a confidentiality designation must file such a challenge and serve it on the Submitting Party. Second, the Submitting Party must file any reply within three business days, and include a justification for treating the information as Confidential or Highly Confidential. Third, the documents challenged will continue to be accorded confidential treatment until the Commission acts on the request and all appeals. And, finally, any decision on confidential treatment does not constitute a resolution of the merits concerning whether such information would be released publicly by the Commission upon an appropriate FOIA request.<sup>19</sup>

6. As noted above, in the *Second Protective Order*, the Bureau clearly articulated a specific process for parties to follow in order to challenge confidentiality designations made by a Submitting Party. Neustar did not provide the Bureau with an opportunity to act on Neustar's questioning of the designation of the MSA as Confidential and Highly Confidential as required by the terms of the *Second Protective Order*. Neustar did not follow the challenge process set forth in the Order and in the Commission's rules, and instead chose to proceed directly to filing an AFR with the Commission.

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<sup>13</sup> See generally Neustar AFR.

<sup>14</sup> Letter from James C. Falvey, Counsel to LNP Alliance, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-149 et al., at 1, 5 (filed Apr. 19, 2016) (OTI/LNP Alliance *Ex Parte*) (stating that NAPM and Telcordia did in fact over-designate, marking the entire MSA as at least Confidential, and supporting Neustar's contention that there is very little proprietary about the MSA).

<sup>15</sup> See generally Opposition of Telcordia Technologies, Inc., d/b/a iconectiv to Neustar's Application for Review of the Second Protective Order, WC Docket Nos. 07-149 and 09-109, CC Docket No. 95-155 (filed Apr. 25, 2016) (Telcordia Opposition); see also Letter from Todd D. Daubert, Counsel to NAPM LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 07-149 and 09-109, CC Docket No. 95-155 at 1 (filed Apr. 25, 2016) (NAPM Opposition) (stating that there is no merit to Neustar's challenge to the *Second Protective Order*, and that previously Neustar argued against Telcordia's challenges for additional access relating to Neustar's old MSA with the NAPM, which the Commission should reject for the same reasons and move forward by approving the MSA and with transition efforts).

<sup>16</sup> See generally Neustar Reply.

<sup>17</sup> See Motion to Strike of Telcordia Technologies, Inc., d/b/a iconectiv, WC Docket Nos. 07-149 and 09-109, CC Docket No. 95-155, at 6-7 (filed May 5, 2016) at 1 (Telcordia Motion to Strike).

<sup>18</sup> See Neustar Opposition to Motion to Strike and Motion for Leave to File Over-length Reply or, in the Alternative, to File Corrected Reply Out of Time, WC Docket Nos. 07-149 and 09-109, CC Docket No. 95-155 (filed May 9, 2016) (Neustar Motion). While the better course of action for Neustar would have been to seek relief to file an over-length pleading prior to or at the time it filed its original Reply on May 5, 2016, we nevertheless grant Neustar's Motion and accept the entire original filing for the record. We, therefore, deny Telcordia's Motion to Strike.

<sup>19</sup> See *Second Protective Order* at 2300, para. 5, citing 47 C.F.R. § 0.459(b), (g)(h); 0.461.

7. Under Section 1.115(c) of our rules, “[n]o application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass.”<sup>20</sup> Neustar, however, did not raise before the Bureau *any* matter that it raises in its application, including, *inter alia*, the question of the designation of the MSA as Confidential and Highly Confidential as required by the terms of the *Second Protective Order*. Consequently, Section 1.115(c) of the Commission’s rules clearly requires that the AFR be dismissed.<sup>21</sup> With respect to Neustar’s complaint about over-designation, Neustar’s rationale for not following the clear terms of the *Second Protective Order* was that it would take too long for the Bureau to act.<sup>22</sup> Neustar may not argue that the Bureau would have taken too long to deal with its request when it did not give the Bureau an opportunity to consider whether there had been over-designation. Indeed, the *Second Protective Order* establishes a process expressly aimed to expeditiously consider claims of over-designation.<sup>23</sup>

8. Neustar claims in its Reply that its AFR is not procedurally barred.<sup>24</sup> According to Neustar, the Commission’s rule, 47 CFR § 1.115, only requires that the Bureau be informed and aware of the substance of its concerns and given an opportunity to decide.<sup>25</sup> Neustar states that the Bureau was made aware of its general concerns through the *ex parte* filings of certain small and medium-sized carriers, and that is all that is necessary to comply with the procedural requirements. Neustar further asserts that the Bureau rejected these arguments (made prior to the issuance of the *Second Protective Order*, the order being contested here) by authorizing the submission of the MSA under seal.<sup>26</sup>

9. We disagree with this reading of the rule. Neustar must exhaust its administrative remedies at the Bureau level before seeking Commission review. With regard to any alleged over-designations of confidentiality, Neustar should have pursued relief with the Bureau following the standard procedures set forth in the *Second Protective Order*. Neustar’s strained interpretation of the case law it cites to support this argument is unconvincing.<sup>27</sup> The primary case Neustar cites is inapposite to the situation presented here and involved the court invoking an exception to the general rule barring AFRs due to unusual factual circumstances not present here.<sup>28</sup> Furthermore, the submission of the MSA by its parties and pursuant to the *Second Protective Order* cannot reasonably be construed to constitute a Bureau action or decision to reject any arguments that Neustar now raises in its AFR.

10. Neustar also alleges that its decision to disregard the procedures of the *Second Protective Order* and instead file the AFR is appropriate because Telcordia and the NAPM should have complied with the law in the first instance, by not making over-broad confidentiality designations.<sup>29</sup> The Bureau adopted a standard practice for protective orders in its *Second Protective Order* and established a clear

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<sup>20</sup> See 47 CFR § 1.115(c).

<sup>21</sup> See *BDPCS, Inc. v. FCC*, 351 F.3d.1177, 1184 (D.C. Cir. 2003) (dismissal of application for review was an “open and shut case” due to BDPCS’s failure to present arguments to the Bureau).

<sup>22</sup> Neustar AFR at 12, note 15; Neustar Reply at 7.

<sup>23</sup> See also Telcordia’s Opposition at 1-3 (stating that because Neustar has failed to raise its challenges to the *Second Protective Order* in the Bureau and is asking the full Commission to overturn the Bureau Order, its AFR should therefore be denied on procedural grounds).

<sup>24</sup> Neustar Reply at 1, 4.

<sup>25</sup> See Neustar Reply at 4.

<sup>26</sup> *Id.* at 4-5.

<sup>27</sup> See *id.* at 4.

<sup>28</sup> See *WSTE-TV, Inc. v. FCC*, 566 F.2d 333,336 (D.C. Cir. 1977) (exception to general rule on review of new matters justified in cases where the new matters could undermine Commission’s conclusions).

<sup>29</sup> Neustar Reply at 1, 7, note 16 (stating that the subsequent MSA filing is a concession of abuse of the overly-broad confidentiality designation).

process by which parties could challenge the designation of a document or portion of a document. We are not persuaded by Neustar's defense of its failure to follow procedure by alleging the perceived deficiencies of others. Moreover, Telcordia notes Neustar's own failure to follow Commission procedure with respect to the length of its Reply and moves to strike all pages after page five in Neustar's Reply.<sup>30</sup>

11. Neustar further argues in its AFR that the *Second Protective Order* improperly restricts Neustar's access to the proposed MSA, unreasonably blocks public participation in the evaluation of the proposed MSA, and is facially discriminatory in violation of the Act.<sup>31</sup> Once again, because Neustar did not comply with the stated procedures for challenging access to the MSA, the Bureau was never given the opportunity to assess or address these arguments.

12. Because Neustar failed to follow the procedures set forth in the *Second Protective Order*, there is no Bureau ruling on the appropriateness of the Submitting Parties' designation of the Confidential and Highly Confidential portions of the MSA for the Commission to review. Neither is there a Bureau ruling on any of the other issues raised by Neustar in the AFR. Accordingly, Neustar's AFR is procedurally defective and we hereby dismiss it on such grounds.

13. **Substantive Issues.** Although we find the AFR to be procedurally defective and have dismissed it, we nonetheless, in the alternative, address Neustar's substantive concerns and deny them on separate and independent grounds. Neustar makes three principal arguments in its AFR: (1) Neustar must have timely and effective access to the proposed MSA; (2) the *Second Protective Order* unreasonably blocks public participation in the evaluation of the proposed MSA; and (3) the *Second Protective Order* is facially discriminatory in violation of the Communications Act.<sup>32</sup>

14. *Timely and Effective Access.* The Commission agrees that Neustar has a legitimate interest in reviewing the MSA.<sup>33</sup> In adopting the *Second Protective Order*, the Bureau, following Commission precedent, balanced the need to allow companies to keep their information confidential with the need for the public to participate in the proceeding. The Bureau accordingly allowed Neustar and other third parties to have appropriate access – that is, access to Confidential information by their Outside Counsel, Outside Consultants, and In-House Counsel not involved in Competitive Decision-Making, and access to Highly Confidential information by their Outside Counsel and Outside Consultants not involved in Competitive Decision-Making.<sup>34</sup> The Bureau considered, and we agree, that this was a reasonable line to draw and, in fact was the same line that the Bureau drew when it issued the *Revised Protective Order* in these proceedings in 2015,<sup>35</sup> which we note Neustar did not challenge. Further, as noted above, Neustar has filed Acknowledgements of Confidentiality to the *Second Protective Order* for more than 20 Outside Counsel and Outside Consultants to have access to the MSA. This large number of representatives have access to the MSA, are able to comment on it, and are able to discuss it (without revealing confidential material) with Neustar. Accordingly, we find that Neustar's claim that it has been denied timely and effective access is unsubstantiated by the record and hereby deny it.

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<sup>30</sup> See generally Telcordia Motion to Strike; see also 47 C.F.R. § 1.115 (f).

<sup>31</sup> See generally Neustar AFR.

<sup>32</sup> See generally *id.*

<sup>33</sup> Neustar AFR at 1-2.

<sup>34</sup> Neustar Reply at 8 (stating that there will be “competitive decision-making” because every carrier will make decisions about *how* to use the NPAC for network management and other functions beyond basic number portability, and those business decisions will be impacted by the terms of the MSA).

<sup>35</sup> *Telcordia Technologies, Inc. Petition to Reform or Strike Amendment 70, to Institute Competitive Bidding for Number Portability Administration, et al.*, WC Docket No. 09-109, CC Docket No. 95-155, Revised Protective Order, 29 FCC 7592 (2014).

15. Neustar claims that its technical and managerial staff need to see the MSA in order to perform their duties effectively.<sup>36</sup> Telcordia objects to Neustar's request for more access and states that disclosing Highly Confidential information beyond what is required by the *Second Protective Order* would make it impossible to engage in the contract rebid that Neustar is seeking in court.<sup>37</sup> Specifically, Telcordia argues that releasing the contents of the MSA would give Neustar an unfair competitive advantage if the contract were rebid, which is what Neustar is seeking in court; and also in negotiating a transition agreement with the NAPM.<sup>38</sup> Telcordia also claims that such details would enable Neustar to undermine the transition and cause delay, cost the industry millions of dollars, trigger penalties, or cause default.<sup>39</sup> Although the NAPM maintains that there is no need for additional rounds of bidding, it states that the integrity of the process must be preserved.<sup>40</sup>

16. We agree with Telcordia and the NAPM, and disagree with Neustar's arguments that such a broad dissemination of the MSA is either appropriate or necessary. We are not convinced that Outside Consultants are incapable of performing the review Neustar needs for this proceeding. Moreover, Neustar has filed an appeal of the *LNPA Selection Order* in the U.S. Court of Appeals for the District of Columbia Circuit.<sup>41</sup> Should the court reverse that Order, Neustar, having seen all of Telcordia's business sensitive information in the MSA, would have a competitive advantage in a re-bid of the LNPA contract. As Telcordia asserts, the D.C. Circuit has recognized the importance of protecting a company's confidential information from its competitors.<sup>42</sup> The cases cited by Neustar as precedent do not suggest otherwise or hold this scenario to violate the right to participate in a proceeding under the Administrative Procedure Act.<sup>43</sup> We also find without merit the OTI/LNP Alliance claim that outside attorneys and consultants lack the inside corporate knowledge to perform effective review.<sup>44</sup> As stated above, the MSA is a legal document, which Outside Counsel and Outside Consultants should be more than competent to review.<sup>45</sup>

17. Neustar cautions that failure to consult with its staff may mean that the transition cannot be implemented on schedule.<sup>46</sup> We do not consider this argument a reason to allow Neustar's employees

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<sup>36</sup> Neustar AFR at 15-16; *see also* OTI/LNP Alliance *Ex Parte* at 5 (stating that the LNP Alliance states that smaller companies should not be discriminated against because their technical personnel must wear multiple hats and also review contracts).

<sup>37</sup> Telcordia Opposition at 1-2, 13.

<sup>38</sup> *Id.* at 1-2.

<sup>39</sup> *Id.* at 1; *see* Neustar Reply at 2-4 (stating that NAPM's claim that Neustar is causing delay has no merit and the delay in the negotiation and presentation of the MSA to the Commission have nothing to do with Neustar).

<sup>40</sup> NAPM Opposition at 3.

<sup>41</sup> *Neustar, Inc. v. FCC*, No. 15-1080 (D.C. Cir., filed Apr. 6, 2015).

<sup>42</sup> *See CBS Corp. v. FCC*, 785 F.3d 699, 701-02 (D.C. Cir. 2015); *see also* Telcordia Opposition at 8 (stating that the current D.C. Circuit precedent recognizes the importance of protecting confidential information from competitors, and the cases cited by Neustar do not suggest otherwise or hold this scenario to be a violation of a participant's right to participate in a proceeding under APA).

<sup>43</sup> *See* Neustar AFR at 6-7 (citing *Block v. SEC*, 50 F.3d 1078, 1085 (D.C. Cir. 1995); *Nichols v. Board of Trs. of Asbestos, Workers Local 24 Pension Plan*, 835 F.2d 881, 896 (D.C. Cir. 1987); *Independent US. Tanker Owners' Committee v. Lewis*, 690 F.2d 908, 922 (D.C. Cir. 1982); *United States Lines, Inc. v. Federal Mar. Comm'n*, 584 F.2d 519, 534 (D.C. Cir. 1978); *Pharmaceutical Research & Mfrs. v. FTC*, 44 F. Supp. 3d 95, 133 (D.D.C. 2014); *Wisconsin Power & Light Co. v. FERC*, 363 F.3d 453, 463 (D.C. Cir. 2004)).

<sup>44</sup> OTI/LNP Alliance *Ex Parte* at 5.

<sup>45</sup> Neustar Reply at 8 (claiming that provisions about data security, privacy, and lessons learned about number portability over the years are technical in nature).

<sup>46</sup> Neustar AFR at 2, 8.

access to review the MSA in this proceeding. Moreover, we do not believe that preventing Neustar's employees from seeing Telcordia's confidential information will affect the transition to Telcordia. First, we note that Neustar is contractually obligated to provide transition assistance<sup>47</sup> and that the NAPM and the TOM have been and will continue to advise Neustar of its transition-related obligations.<sup>48</sup> Second, as the NAPM points out, Neustar is currently billing the industry approximately \$500,000 each month for transition services.<sup>49</sup> This would strongly suggest that Neustar is already fully engaged and, as it claims, is fully coordinating with the NAPM, Telcordia, and the TOM in the transition efforts. Third, the current NPAC has a detailed set of technical specifications that Neustar, as the current LNPA, has been contractually obligated to keep up to date.<sup>50</sup> The NAPM and Telcordia note that any need for further technical requirements will be shared at the appropriate times, post-Commission approval of the MSA. The TOM, the NAPM, and Telcordia have worked diligently to construct a transition schedule which will provide Neustar with ample time to receive and undertake its specific transition duties, after the MSA is signed. The NAPM especially has extensive experience with incorporating changes to the NPAC database, as it has facilitated since 1997, and it is well-positioned to ensure that all parties have sufficient time to fulfill their transition obligations. The NAPM also states that the means to more immediately provide Neustar with the necessary information exists today, or can be created, so long as Neustar honors its legal obligations and claims that it will act in good faith.<sup>51</sup> Therefore, we deny this claim and conclude there is no need for a more broad distribution of the MSA for these alleged technical reasons.

18. Public Participation in Evaluating the MSA. Neustar claims, on behalf of the public at large, that the provisions of the *Second Protective Order*, “unreasonably burdens public participation in the evaluation of the proposed MSA” and claims that the Bureau has failed to “give appropriate access to the public.”<sup>52</sup> We disagree, and find that, as the Bureau stated, the procedures set forth in the adopted Order “give appropriate access to the public while protecting competitively sensitive information from improper disclosure, and that the procedures thereby serve the public interest.”<sup>53</sup> The *Second Protective Order* provides that access to Confidential Information is open to In-House Counsel not involved in Competitive Decision-Making, as well as Outside Counsel of Record and Outside Consultants, as such terms are defined in the *Second Protective Order*. Access to Highly Confidential Information relating to national security and law enforcement aspects of the MSA is open to Outside Counsel of Record and Outside Consultants. Such persons must submit a signed Acknowledgment of Confidentiality<sup>54</sup> in which they acknowledge and agree to be bound by the terms of the *Second Protective Order*, and certify that they are not involved in “Competitive Decision-Making” as defined in the *Second Protective Order*.<sup>55</sup> In

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<sup>47</sup> Contractor Services Agreement for NPAC/SMS ( a/k/a the Master Services Agreement), Statement of Work (SOW) 15, SOW 19, SOW 24, SOW 25, SOW 30, SOW 31, SOW 34, SOW 36, SOW 42, SOW 43, SOW 47, SOW 48, Letter Agreement, dated August 14, 2002: [http://www.sec.gov/Archives/edgar/data/1265888/000104746905018239/a2160129zex-10\\_1.htm](http://www.sec.gov/Archives/edgar/data/1265888/000104746905018239/a2160129zex-10_1.htm) at §24.

<sup>48</sup> NAPM Opposition at 3.

<sup>49</sup> *Id.*

<sup>50</sup> Telcordia Opposition at 7.

<sup>51</sup> *Id.* at 7; NAPM Opposition at 3.

<sup>52</sup> Neustar AFR at 11.

<sup>53</sup> *Second Protective Order* at 2298, para. 2.

<sup>54</sup> *See id.* at Appx. A.

<sup>55</sup> *Id.* at 2298, paras. 2-3 (“‘Competitive Decision-Making’ means a person’s activities, association, or relationship with any of its clients involving advice about or participation in the relevant business decisions or the analysis underlying the relevant business decisions of the client in competition with or in a business relationship with the Submitting Party.”).

addition, to access Security Documents<sup>56</sup> the Reviewing Party must be a citizen of the United States of America, can only review the documents on site, may have no more than four Outside Counsel or Outside Consultants or a combination thereof per Participant, and may only take away personal notes made while inspecting said documents.<sup>57</sup>

19. We disagree with Neustar that the Bureau has failed to give appropriate access to the public in this proceeding. The Commission has long “used protective orders in a variety of proceedings to protect competitively sensitive information from public disclosure while at the same time allowing interested parties to have access to potentially decisional documents.”<sup>58</sup> Consistent with that practice, the Bureau adopted what is essentially the Commission’s standard protective order. We agree with the Bureau that the access provided by the *Second Protective Order* allows appropriate access to the MSA. Nothing that Neustar argues persuades us otherwise. Accordingly, we affirm the Bureau’s conclusion that the *Second Protective Order* properly balances the right of the public, and our desire for the public, to meaningfully participate in this proceeding with the interests of the parties of not having their competitively and commercially sensitive information improperly disclosed and used.

20. Neustar claims that the expense for telecommunications industry participants to gain access is prohibitive.<sup>59</sup> Again, we disagree. The fact that Neustar has chosen to engage a large number of law firms to advocate on its behalf in this proceeding does not mean that other carriers and interested parties need to do the same in order to participate effectively. Carriers could seek to participate using In-House Counsel for the review of confidential material, as most carriers’ In-House Counsel are not involved in Competitive Decision-Making that would otherwise preclude their participation. In addition, for smaller carriers that do not have In-House Counsel, Outside Counsel or a trade association provide a viable avenue for reviewing confidential material.<sup>60</sup>

21. Neustar requests public disclosure of the entire MSA and claims that there has been no adequate demonstration that it should be exempt from public disclosure.<sup>61</sup> Neustar also alleges that the treatment of Security Documents is unexplained and improper.<sup>62</sup> Telcordia responds that Neustar is wrong as a matter of law when it says that the Commission must release the MSA in its entirety because the MSA qualifies under FOIA Exemption 4, which protects from disclosure trade secrets, financial and commercial information.<sup>63</sup> Telcordia explains that this exemption applies because disclosure would undermine its ability to secure the NPAC, causing significant competitive harm to Telcordia and the NAPM.<sup>64</sup> We agree. Further, as discussed above, Neustar is seeking to have the LNPA contract rebid and Telcordia will suffer harm if the details of the MSA are released to its potential competitor. With regard to any argument that the entire MSA does not need to be kept from the public, we consider that

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<sup>56</sup> *Id.* at 2299, para. 3 (“‘Security Documents’ means Section 5.3 of the MSA and Exhibits R1-R5 to the MSA.”).

<sup>57</sup> *Id.* at 2302, para 9.

<sup>58</sup> *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, 12 FCC Rcd 2170, 2213, para. 91 (and cases cited therein) (1997). See also *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 15-149, Order, 30 FCC Rcd 10360, 10365, para. 12 (and decisions cited therein) (2015) (*Charter TWC Transfer of Control*); *CBS Corp. v. FCC*, 785 F.3d at 701-02.

<sup>59</sup> Neustar AFR at 11, 16.

<sup>60</sup> Telcordia Opposition at 9 (stating that the carriers can also retain outside counsel or be represented by a trade association).

<sup>61</sup> Neustar AFR at 12.

<sup>62</sup> *Id.* at 13.

<sup>63</sup> See 47 C.F.R. § 0.457(d).

<sup>64</sup> Telcordia Opposition at 10.



there has been a good faith attempt by Telcordia and the NAPM to unredact a significant portion of the MSA. If Neustar or others believe that more of the MSA should be unredacted, they should follow the provisions set forth in the *Second Protective Order* and request relief from the Bureau. With regard to the Security Documents, these are documents which, as the *Second Protective Order* explains, contain information that relates to national security and law enforcement. The Bureau reasonably limited the number of persons who could have access to the Security Documents as well as imposing a more restrictive process for obtaining access to persons with a genuine “need to know.”

22. *Compliance with the Communications Act.* Neustar claims that the *Second Protective Order* violates the neutrality provisions of the Communications Act. It reasons that because only those companies who are members of the NAPM get to review the MSA, the Order is discriminatory.<sup>65</sup> Telcordia responds that Section 251(e) of the Communications Act<sup>66</sup> has nothing to do with whether the Commission may release documents under a protective order, and whether “the MSA is released under the Protective Order has absolutely nothing to do with whether Telcordia is a ‘neutral entity . . .’” Moreover, Telcordia states that nothing in Section 251(e) mandates that all telecommunications carriers have the same level of access as the NAPM.<sup>67</sup> We agree with Telcordia that Neustar confuses the neutrality provisions of the Act with the provisions of the *Second Protective Order*.<sup>68</sup> Whether the MSA is released under a protective order has nothing to do with whether Telcordia is neutral. The provisions of a protective order do not determine whether a party is neutral, they set forth the procedures of how documents may be accessed in order to preserve a party’s confidentiality.

23. Neustar’s additional argument that NAPM members were allowed to see the MSA whereas non-members were not and that that is discriminatory is equally unpersuasive. Under the process established by the Commission in its March 2015 *LNPA Selection Order*, the NAPM is one of the contracting parties to the MSA. Further, in its Reply, Neustar states that “the need to ensure that the MSA guarantees the impartiality and neutrality of the LNPA — particularly in circumstances where there is real cause for concern about divided loyalties — mandates that the Commission provide a meaningful opportunity for public comment.”<sup>69</sup> Throughout this proceeding, the Commission has provided a meaningful opportunity for public comment. Beginning in 2011 with the selection process to the conditional selection of Telcordia as the LNPA, the Commission has allowed for considerable public participation in this proceeding.<sup>70</sup> The process involved extensive input from the industry, government entities, and consumer groups throughout, including multiple opportunities for public comment from all interested parties, for example, on the RFP to select a new LNPA, the LNPA selection process, and the draft bid documents. In the *LNPA Selection Order*, we determined that the NAPM had the resources and expertise to handle contract negotiations with Telcordia. With multiple opportunities for engagement and consistent with the Commission’s *LNPA Selection Order*, the NAPM has negotiated a draft MSA with Telcordia on behalf of all service providers.

#### IV. CONCLUSION

24. We find Neustar’s AFR to be procedurally defective and, in the alternative, substantively without merit. Moreover, we note in any event that some of the relief that Neustar requested in its AFR

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<sup>65</sup> Neustar AFR at 15-16.

<sup>66</sup> 47 U.S.C. § 251 (e).

<sup>67</sup> Telcordia Opposition at 13-14.

<sup>68</sup> See 47 U.S.C. § 251 (e)(1); see also generally 47 C.F.R. § 52.12.

<sup>69</sup> Neustar Reply at 11-12.

<sup>70</sup> See *In the Matter of 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; Telephone Number Portability*, WC Docket Nos. 07-149, 09-109, CC Docket 95-116, Order, 29 FCC Rcd 7592 (*Revised Protective Order*); *Second Protective Order*.

has already been provided, notwithstanding its failure to follow the procedures set forth in the *Second Protective Order*. The NAPM and Telcordia have re-filed the MSA with substantially fewer redactions; therefore, as mentioned above, a proper balance has been struck between public participation and the protection of sensitive information.

25. We find that the *Second Protective Order* in this proceeding, which is in place to help balance the sensitive nature of confidential filings, while being “mindful of the right of the public to participate in this proceeding in a meaningful way,” does just that.<sup>71</sup> As such, we disagree with Neustar’s and OTI/LNP Alliance’s arguments to the contrary.<sup>72</sup> Rather, the *Second Protective Order* in place in this proceeding facilitates the goal of transparency while balancing the sensitive nature of confidential information. The Commission has utilized protective orders to handle sensitive information successfully for over 15 years.<sup>73</sup> We agree that the “Commission’s protective orders . . . are based on years of Commission experience and represent a time-tested means to protect highly sensitive information . . . .”<sup>74</sup> The *Second Protective Order* continues to accomplish that goal.

## V. ORDERING CLAUSES

26. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i)-(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 155, and 303(r), the Neustar, Inc. Application for Review filed on March 31, 2016 **IS DISMISSED** on procedural grounds and, in the alternative, **DENIED** for the reasons stated herein.

27. IT IS FURTHER ORDERED that, pursuant to sections 1, 2, 4(i)-(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 155, and 303(r), the Telcordia Motion to Strike filed on May 6, 2016 **IS DENIED** and the Neustar Motion for Leave to File Over-Length Reply **IS GRANTED**.

28. IT IS FURTHER ORDERED that all parties in this proceeding **MUST COMPLY** with the terms of the *Second Protective Order* in this docket.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>71</sup> *Second Protective Order* at 2298, para. 2.

<sup>72</sup> See generally Neustar AFR at 11-14; see also generally OTI/LNP Alliance *Ex Parte*.

<sup>73</sup> See *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, GC Docket No. 96-55, 13 FCC Rcd 24816 at 24824, para. 10 (1998) (Report and Order adopting a model protective order and acknowledging that “the handling of confidential information requires the Commission to balance the concerns of the parties submitting information and the interest of the public in accessing that information.”); amended by *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Memorandum Opinion and Order on Reconsideration, GC Docket No. 96-55, 14 FCC Rcd 20128 (1999).

<sup>74</sup> *Charter TWC Transfer of Control*, 30 FCC Rcd at 10386, para. 48.