



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET, N.W.
WASHINGTON, D.C. 20554

News Media Information (202) 418-0500.
Internet <http://www.fcc.gov>

DA 99-117
Released: January 7, 1999

**FCC SEEKS COMMENT ON REQUEST FOR EXPEDITIOUS
REVIEW OF THE TRANSFER OF THE LOCKHEED MARTIN
COMMUNICATIONS INDUSTRY SERVICES BUSINESS**

CC Docket No. 92-237
NSD File No. 98-151

Issues and/or Questions Due: January 22, 1999
Comments on Lockheed Martin Request Due: March 17, 1999

INTRODUCTION

The Common Carrier Bureau (Bureau) hereby gives notice of a December 21, 1998 filing by Lockheed Martin IMS Corporation (Lockheed Martin) of a Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Services (CIS) Business to a new independent company, Warburg, Pincus & Co.¹ The CIS business unit of Lockheed Martin IMS currently serves as the North American Numbering Plan Administrator (NANPA).

To ensure the most comprehensive review of the Lockheed Martin Request, the Bureau seeks input from the public on issues that the Commission should address in considering this matter of significant public interest. Comments should be filed in accordance with the procedures outlined below.

¹ 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 from Lockheed Martin Corporation to an Affiliate of Warburg, Pincus & Co., CC Docket No. 92-237, NSD File No. 98-151 (Dec. 21, 1998) (Lockheed Martin Request).

BACKGROUND

In an order released on July 13, 1995,² the Commission established the North American Number Council (NANC) pursuant to the Federal Advisory Committee Act (FACA).³ The *NANP Order* directed the NANC to recommend to the Commission and to other member countries of the North American Numbering Plan (NANP) a neutral entity to serve as the NANPA and a mechanism for recovering the costs of NANP administration in the United States. The Commission's charge that the NANC recommend an impartial NANP administrator is consistent with Congress' directive in section 251(e) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996,⁴ that the Commission designate an impartial numbering administrator to make telecommunications numbering available on an equitable basis.

On October 9, 1997, the Commission affirmed the NANC's selection of Lockheed Martin as the NANPA, subject to conditions outlined in the order and to the rules proposed by the NANC to govern the activities of the NANPA.⁵ The Commission also accepted the NANC's recommendation that Mitretek Systems (Mitretek) serve as the alternate NANPA, to assume NANPA responsibilities for the remainder of the five-year term, if it wished to do so, should Lockheed Martin not perform the NANPA functions in a satisfactory fashion.⁶

The NANPA is required by statute and by the Commission's rules to assign and administer NANP resources in an efficient, effective, fair, unbiased, and non-discriminatory manner.⁷ For this reason, in its February 20, 1997 NANP Administration Requirements Document (Requirements Document), the NANC established specific criteria to ensure the neutrality of the NANPA.⁸ In general, the NANPA must be a "non-governmental entity that is not aligned with any particular telecommunications industry segment."⁹ More specifically, the Requirements Document establishes

² Administration of the North American Numbering Plan, *Report and Order*, CC Docket No. 92-237, 11 FCC Rcd 2588, 2590 (1995) (*NANP Order*).

³ 5 U.S.C., App. 2.

⁴ Telecommunications Act of 1996, Pub. L. No. 101-101, 110 Stat. 56 (1996).

⁵ In the Matter of Administration of the North American Numbering Plan and Toll Free Service Access Codes, *Third Report and Order and Third Report and Order*, CC Docket Nos. 92-237 and 95-155, FCC 97-372 (rel. Oct. 9, 1997) (*NANP Administration Third Report and Order*).

⁶ *NANP Administration Third Report and Order* at para. 67.

⁷ See 47 U.S.C. § 251(e); 47 C.F.R. § 52.13(b).

⁸ Requirements Document at section 1.2

⁹ Requirements Document at section 1.2

that the NANPA may not be an affiliate of any telecommunications service provider, and defined the term "affiliate."¹⁰

In its *NANP Administration Third Report and Order*, in evaluating possible NANP administrators, the Commission addressed questions that had been raised about Lockheed Martin's neutrality.¹¹ Although the Commission determined that Lockheed Martin IMS could serve as the NANPA without compromising the purposes of the statute and the resulting neutrality criteria, it also stated that if Lockheed Martin or its affiliates in the future offer common carrier services that are more than *de minimis* in nature, we would reconsider the issue of Lockheed Martin's neutrality under section 52.12 of the Commission's rules and consider ways to ensure continued neutrality.¹²

Lockheed Martin assumed the NANPA functions in February 1998¹³ and will have assumed the central office (CO) code administrator functions from all 11 regional CO code administrators by early June 1999.¹⁴ Recently, the Commission was placed on notice that Lockheed Martin is seeking to acquire Comsat Government Services, Inc., a wholly owned subsidiary of Comsat, to facilitate the strategic aims of Lockheed Martin's newly formed Global Telecommunications subsidiary.¹⁵ On October 22, 1998, Lockheed Martin issued a report to the NANC, following upon several previous reports to the NANC, in which Lockheed Martin announced its intention to divest the CIS unit, in order to adhere to the Commission's neutrality requirement for the NANPA, as the third party administrator of numbering resources. The Lockheed Martin Request, outlined below, describes Lockheed Martin's proposed divestiture of the CIS unit.

OVERVIEW OF LOCKHEED MARTIN REQUEST

In its filing, Lockheed Martin states that it has signed an agreement (Transaction Agreement) to sell its CIS business unit to CIS management and an affiliate of E. M. Warburg, Pincus & Co.

¹⁰ Requirements Document at section 1.2.

¹¹ *NANP Administration Third Report and Order* at paras. 70-81.

¹² *NANP Administration Third Report and Order* at para. 81.

¹³ The Commission's order required Bellcore, the previous NANPA, to transition the NANP functions to Lockheed Martin no later than 90 days after selection of Lockheed Martin. *NANP Administration Third Report and Order* at n.226.

¹⁴ *NANP Administration Third Report and Order* at n.226. Although the 18-month time frame provided by the Commission for the transition of the Central Office (CO) code administration functions from the 11 regional CO code administrators to Lockheed Martin does not expire until August 1999, Lockheed Martin will complete the transition schedule in advance of that time frame.

¹⁵ Lockheed Martin Corporation, Regulus, LLC, COMSAT Corporation, and COMSAT Government Services, Inc., application to International Bureau, Satellite Policy Branch, Report No. SPB-139 (rel. Oct. 23, 1998). COMSAT holds a 214 authorization to provide international common carrier services.

(Warburg), Warburg, Pincus Equity Partners, L.P. (WPEP).¹⁶ Pursuant to the Transaction Agreement, 95% of Lockheed Martin's equity interest in CIS will be acquired by CIS Acquisition Corporation, a newly organized corporation, and WPEP. The remaining 5% interest will be maintained by Lockheed Martin.¹⁷

According to Lockheed Martin, the Transaction Agreement is structured so that the newly formed CIS Acquisition Corporation "stands in the shoes of its predecessor."¹⁸ Lockheed Martin maintains that the restructured CIS will deliver the same services using the same systems, processes and staff, and that all of the staff, systems and infrastructure required to deliver CIS services will transfer from Lockheed Martin to the newly structured CIS.¹⁹ Lockheed Martin states that the restructured CIS will offer services under the identical pricing, terms and conditions agreed to in CIS's response to the Requirements Documents and in subsequent industry-approved statements of work.²⁰

According to Lockheed Martin, the proposed transfer of the CIS business will serve the public interest. First, Lockheed Martin maintains that the CIS sale will be seamless to the industry and to CIS customers. As such, the proposed transfer is intended to ensure CIS's continued ability to provide "high quality neutral third party numbering administration services."²¹

Second, Lockheed Martin states that the restructured CIS business will have a stable, reliable and broad-based financial investor in Warburg. In this regard, Lockheed Martin notes that Warburg intends that CIS have access to the resources it needs to fulfill its existing commitments and to grow and develop.²²

Third, Lockheed Martin states that the ownership of the CIS business by Warburg will ensure that CIS's operations remain neutral.²³ Lockheed Martin claims that, as a financial investor, Warburg does not have the same neutrality conflicts as an operating company. Lockheed Martin claims that Warburg will depend on CIS' management team to lead and manage CIS.²⁴ Although Lockheed

¹⁶ Lockheed Martin Request at 1, 5.
¹⁷ Lockheed Martin Request at 6.
¹⁸ Lockheed Martin Request at 6.
¹⁹ Lockheed Martin Request at 6.
²⁰ Lockheed Martin Request at 6.
²¹ Lockheed Martin Request at 9-10.
²² Lockheed Martin Request at 10.
²³ Lockheed Martin Request at 12.
²⁴ Lockheed Martin Request at 13-14.

Martin acknowledges that Warburg has certain telecommunications interests, it maintains that those telecommunications investments currently account for less than five percent of the value of Warburg's total private equity investments and that Warburg does not have a vested interest in the outcome of numbering administration decisions.²⁵

Lockheed Martin also states that CIS and Warburg have committed to a Code of Conduct to further ensure that neutrality is maintained. According to Lockheed Martin, the Code guarantees that CIS will manage all of its operations in competitively neutral ways that meet the needs of the industry, that all service providers are treated equally, and that the confidentiality of all CIS data is maintained.²⁶ In addition, CIS will conduct at its expense, "audits of its adherence to and performance relative to the neutrality requirements of the industry."²⁷ Moreover, Lockheed Martin states that Warburg also has agreed to be bound by certain additional conditions "to ensure the continued neutrality of CIS regardless of the telecommunications interests of its parent company."²⁸ Finally, any future investments by Warburg's private equity funds in telecommunications service providers, that meet the NANPA affiliation thresholds, would be the subject of discussions between Warburg and the Commission as to appropriate informational barriers, safeguards or other alternatives to preserve the service levels and neutrality of the CIS business.²⁹

REQUEST FOR PUBLIC COMMENT

The NANP is the basic numbering scheme for the telecommunications networks located in 18 countries, including the United States, U.S. territories, Canada and countries in the Caribbean. Because of the importance of the NANPA's neutrality to the administration of numbering resources on a neutral, fair, effective and efficient basis, the Bureau seeks to ensure a comprehensive review of the Lockheed Martin Request. Moreover, because of the nature of the functions performed by the NANPA, the Bureau believes that public input into the review of the Lockheed Martin Request is particularly important. For these reasons, the Bureau has determined that interested parties should be permitted to raise reasonable and relevant questions concerning the Lockheed Martin Request and adopts the following procedures for this purpose:

- (1) Interested parties should submit to the Bureau issues and/or questions that they believe should be addressed by Lockheed Martin before the Commission reaches a determination on the Lockheed Martin Request. All issues and/or questions must be filed with the Bureau on or before January 22, 1999.

²⁵ Lockheed Martin Request at 15-19.

²⁶ Lockheed Request at 20.

²⁷ Lockheed Martin Request at 20.

²⁸ Lockheed Martin Request at 20.

²⁹ Lockheed Martin Request at 21.

- (2) After evaluating all issues and questions raised by commenters, to ensure that the subject matter is relevant to the decision that must be reached by the Commission and to avoid duplication of issues and questions, the Bureau will forward, as soon as possible, a consolidated list of issues and questions to Lockheed Martin for response.
- (3) Lockheed Martin should respond to all issues and questions propounded by the Bureau within 15 days following receipt of the issues and questions from the Bureau. If it objects to responding to an issue or question, Lockheed Martin should state with specificity the nature of the objection. Thereafter, the Bureau may issue further rulings on the objections.
- (4) The Bureau will place Lockheed Martin's responses on public notice as soon upon receipt as possible. The Bureau seeks comment from the public by March 17, 1999, on whether it should recommend to the Commission that the Lockheed Martin Request be granted, with or without any conditions.

Examples of the kinds of issues on which the Bureau seeks public input by January 22, 1999, include, but are not limited to, the following:

- (1) the neutrality of the CIS Acquisition Corporation, on the basis of the neutrality criteria set forth in the Requirements Document, as well as the Commission's rules and orders;
- (2) the ability of the CIS Acquisition Corporation to perform the functions of the NANPA in accordance with the Requirements Document;
- (3) the commitment of the CIS Acquisition Corporation to perform the functions of the NANPA at the price agreed to by Lockheed Martin; and,
- (4) the ability and commitment of the CIS Acquisition Corporation to fulfill the remainder of Lockheed Martin's current term as NANPA, without compromising its neutrality and the resources needed to administer the NANP.

The Bureau also recognizes that the Commission adopted the NANC's recommendation that Mitretek serve as the alternate NANPA, to assume NANPA responsibilities for the remainder of the five-year term should Lockheed Martin not perform the NANPA functions in a satisfactory fashion. We note that Mitretek has urged the Commission to name it, the designated alternate, as the NANPA successor to Lockheed Martin.³⁰ For this reason, the Bureau also seeks public input on issues and

³⁰ See, e.g., Letter from Dr. H. Gilbert Miller, Vice President, Center for Telecommunications and Advanced Technology, Mitretek, to Lawrence E. Strickling, Chief, Common Carrier Bureau, FCC, dated Dec. 8, 1998. Mitretek's December 8 letter is available on the NANC website, www.fcc.gov/ccb/Nanc, or from the Network Services Division Public Reference Room at the address provided below.

questions that Mitretek should be permitted to answer following procedures identical to those outlined above. Example of issues or questions for Mitretek might include:

- (1) the ability of Mitretek to perform the functions of the NANPA in accordance with the Requirements Document;
- (2) the price at which Mitretek would agree to perform the functions of the NANPA and its ability and commitment to fulfill the remainder of Lockheed Martin's current term as the NANPA, without compromising its neutrality and the resources needed to administer the NANP; and,
- (3) the manner in which Mitretek would transition the NANPA responsibilities to ensure a transparent and seamless transfer from the standpoint of the industry.

Interested parties also may wish to raise questions for either Lockheed Martin or Mitretek concerning the impact of the transfer of the NANPA functions from Lockheed Martin to a new entity on the other 18 members of the NANP and on the seven LLCs in the United States.

Finally, the Bureau notes that it is also contemporaneously requesting the NANC to provide its input to the Bureau on the issues and questions that should be directed both to Lockheed Martin and to Mitretek. Based on the NANC's expertise, the Bureau believes its input will assist the Commission in reaching a decision that ensures the NANPA's neutrality to the administration of numbering resources on a neutral, fair, effective and efficient basis.

PROCEDURAL MATTERS

Proposed issues and/or questions on the Lockheed Martin Request must be filed with the Bureau by **January 22, 1999**. Comments on the Lockheed Martin Request must be filed with the Bureau by **March 17, 1999**. Parties should reference **CC Docket No. 92-237 and NSD File No. 98-151** in their comments. Parties may obtain the Lockheed Martin Request at the NANC website, www.fcc.gov/ccb/Nanc. The Lockheed Martin Request is available for public inspection and copying in the Network Services Division Public Reference Room, Room 220, 2000 M Street, NW, Washington, DC 20554. Copies of the Lockheed Martin Request also are available from ITS, at 1231 20th Street, NW, Washington, DC 20036, or by calling (202) 857-3800.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.³¹ Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters

³¹ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).

should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, including "get form <your e-mail address>" in the body of the message. A sample form and directions will be sent in reply. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.³²

This proceeding is considered exempt for *ex parte* purposes. 47 C.F.R. §§ 1.1200(a), 1.1204(b). Interested parties should file an original and four copies of their comments with the Office of the Secretary, Federal Communications Commission, 445 Twelfth St., S.W., Room TW-A325, Washington, D.C. 20554. In addition, parties should send two copies to Jeannie Grimes, Common Carrier Bureau, FCC, Suite 235, 2000 M Street, N.W., Washington, D.C. 20554, and one copy to ITS, at 1231 20th Street, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Kris Monteith at (202) 418-1520 or Jared Carlson or Jeannie Grimes at (202) 418-2320. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, D.C. 20054. The fax number is: (202) 418-2345. The TTY number is: (202) 418-0484.

³² See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).