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ZIELKE LAW FIRM, PLLC

1250 Meidinger Tower  
Louisville, Kentucky 40202  
502-589-4600  
Fax: 502-584-0422

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Date: Feb 19 2010

From: Janice Theriot

Pages: 23

Subject: Case # 2008-00335

COMMENTS:

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# Zielke Law Firm PLLC

ATTORNEYS AT LAW

1250 MEIDINGER TOWER  
462 SOUTH FOURTH AVENUE  
LOUISVILLE, KY 40202-3465  
(502) 589-4600 • Fax (502) 584-0422  
WWW.ZIELKEFIRM.COM

February 19, 2010

**VIA FACSIMILE AND OVERNIGHT DELIVERY**  
**(502)564-3460**

Jeff DeRouen, Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, KY 40602

**Re: Case No. 2008-00335, Insight Phone v. Windstream**

Dear Mr. DeRouen:

Attached is Insight Phone of Kentucky, LLC's Brief in the above referenced matter.

The filing office informed me that I must fax a copy to the above number today, the deadline, and follow with an overnight delivery on Monday for the filing to be timely.

Thank you for your consideration.

Respectfully,

Janice M. Theriot

cc: Douglas F. Brent  
Stoll, Keenon & Ogden PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, KY 40202  
douglas.brent@skofirm.com

Mark R. Overstreet  
Stites & Harbison PLLC  
421 West Main Street  
P.O. Box 634  
Frankfort, KY 40602-0634  
moverstreet@stites.com

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

FORMAL COMPLAINT FOR EMERGENCY RELIEF )  
BY INSIGHT PHONE OF KENTUCKY, LLC TO )  
REQUIRE WINDSTREAM KENTUCKY EAST, LLC ) CASE NO.  
AND WINDSTREAM KENTUCKY WEST, LLC ) 2008-00335  
TO PROVIDE ACCOUNT NUMBERS WHEN )  
AUTHORIZED BY CUSTOMERS IF IT REQUIRES )  
AN ACCOUNT NUMBER FOR PORTS )

INSIGHT'S BRIEF IN SUPPORT OF ITS FORMAL COMPLAINT

Insight Phone of Kentucky, LLC (hereinafter "Insight Phone"), by counsel, hereby files this Brief in support of its petition to the Public Service Commission of the Commonwealth of Kentucky (hereinafter "Commission") for an order requiring Windstream Kentucky East, LLC and Windstream Kentucky West, LLC (hereinafter, collectively "Windstream") to either stop requiring account numbers and passcodes for ports or, if it requires account numbers and passcodes, to provide them on its Windstream Express interface when a customer has authorized Insight to review the information..

The Parties filed Stipulated Facts along with various exhibits on January 4, 2010, in lieu of other prefiled testimony, for the sole purpose of briefing the following issues:

- a. Whether Windstream may require account numbers and/or passcodes for access to Customer Proprietary Network Information ("CPNI") and other material account information, and to request changes in service providers (e.g., port requests);

- b. Whether Windstream must provide Insight Phone with customer account numbers and/or passcodes when Insight Phone represents that the customer has authorized Insight Phone to access his or her CPNI; and
- c. Whether Windstream must provide Insight Phone with customer freeze information when Insight Phone represents that the customer has authorized Insight Phone to access his or her CPNI.

### INTRODUCTION

Insight Phone and Windstream must interact with each other whenever a customer of one company ports a phone number to the other company. Porting requires that certain customer information be shared between the companies. At issue in this case are the unlawful procedures that Windstream forces Insight Phone to use to port customers, which create roadblocks to ports that are contrary to state and federal law.

### FACTS

The facts as stipulated by the parties are incorporated herein. In short, Congress and the Federal Communications Commission ("FCC"), through the Telecommunications Act of 1996, created a procedure wherein a telephone customer may switch telephone providers while retaining the same telephone number. Such a procedure, known as "porting," requires that the new telephone provider communicate with the old telephone provider. It is this communication that is at issue in this case. When Insight Phone communicates with Windstream in order to port a telephone customer from Windstream to Insight, Windstream's actions violate federal and state law as well as the Interconnection Agreements ("ICAs") between the parties.

As indicated in the stipulated facts, Insight Phone and Windstream have two Interconnection Agreements ("ICA") approved by this Commission with identical Section 17 language which explicitly states "Subject to applicable rules, orders, and decisions, Windstream will provide Insight Phone with access to Customer Proprietary Network Information (CPNI) for Windstream End Users upon Insight Phone providing Windstream a signed blanket Letter of Agency (LOA) for Windstream's Customer of record." Section 17 reads as follows:

**17.0 Changes in Subscriber Carrier Selection**

17.1 Each Party will abide by applicable state or federal laws and regulations in obtaining End User authorization prior to changing End User's Local Service Provider to itself and in assuming responsibility for any applicable charges as specified in §258 (b) of the Telecommunications Act of 1996. Either Party shall make authorization available to the other Party upon reasonable requests and at no charge.

17.2 If an End User notifies either Party that the End User requests local exchange service, the Party receiving such request shall be free to immediately provide service to such End User.

17.3 When an End User changes or withdraws authorization, each Party will release Customer specific facilities in accordance with the Customers' direction or the End User's authorized agent.

17.4 Subject to applicable rules, orders, and decisions, Windstream will provide Insight with access to Customer Proprietary Network Information (CPNI) for Windstream End Users upon Insight providing Windstream a signed blanket Letter of Agency (LOA) for Windstream's Customer of record, based on Insight's representation that subscriber has authorized Insight to obtain such CPNI.

17.4.1 The Parties agree that they will conform to FCC and/or state regulations regarding the provisioning of CPNI between

the Parties, and regarding the use of that information by the requesting Party.

17.4.2 The requesting Party will document End User permission obtained to receive CPNI, whether or not the End User has agreed to change Local Service Providers. For End users changing service from one Party to the other, specific End User LOAs may be requested by the Party receiving CPNI requests to investigate slamming complaints, and for other reasons agreed to by the Parties.

17.4.3 CPNI requests will be processed in accordance with the following:

17.4.3.1 For Customers with 1-25 lines: one (1) business day.

17.4.3.2 For Customers with 26+ lines: two (2) business days.

17.4.4 If the Parties do not agree that Insight requested CPNI for a specific End User, or that Windstream has erred in not accepting proof of an LOA, the Parties may immediately request dispute resolution in accordance with General Terms & Conditions, §9.0, Dispute Resolution.

17.5 Windstream will only accept an LOA for a Windstream Customer of record. Insight may delegate its obligation to obtain written authorization from Windstream's Customer of record to a third party only after Insight has provided Windstream a Letter of Agency on Insight letterhead, and signed by an authorized Insight representative identifying the third party name, and specific functions by state the third party is authorized to perform on behalf of Insight.

Under Section 17.4 of the ICA, Windstream is required to provide Insight Phone with access to a customer's CPNI based upon Insight's representation that the subscriber

has authorized Insight to obtain such CPNI, provided Insight has provided Windstream with a signed blanket Letter of Agency. Insight provided Windstream with a blanket Letter of Agency pursuant to the ICA on January 2, 2008 and Windstream has never indicated that the Blanket Letter of Agency provided is not sufficient. Windstream maintains a graphic user interface called Windstream Express for use by authorized telephone service carriers such as Insight Phone. When a Windstream telephone customer authorizes Insight Phone to access the customer's information, Insight Phone can access the information electronically through Windstream Express. As a regulated carrier, and as per the ICA, Insight Phone is permitted to access customer information through Windstream Express only if the customer has granted Insight Phone such authorization. Section 17 of the ICA makes it clear that the customer information Insight may access, with customer authorization, includes CPNI. CPNI as used in the ICA is defined in 47 U.S.C. §222(h)(1)(B) as including "information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier."

Once a customer authorizes Insight Phone to access his or her information, Windstream is obligated to allow that access. However, Windstream has created roadblocks to accessing a customer's information through Windstream Express. Windstream now requires Insight Phone to input two extraneous pieces of information to access the customer's information through Windstream Express: customer account numbers and customer passcodes. These two pieces of information are not required for verifying the customer and only serve to interfere with the port. Indeed, before Windstream began requiring customer account numbers and customer passcodes, Insight Phone ported many customers with no difficulty. Up until August 1, 2008, Insight Phone

was able to port numbers by supplying Windstream with a customer name, telephone number and zip code only.

Customers typically do not know their account number or passcodes; therefore, to port a number they must either find a Windstream bill or call Windstream to get the information. Indeed, Windstream unilaterally created most customer passcodes in April 2009, without customer request or prior authorization, and put them on one page of a multipage bill. On a different page entirely, in very small type, customers were told that the passcode will offer protection if an unauthorized third party attempts to change service providers. Customers do not need to access their passcodes, and may not even know it exists, until they attempt to port their number, at which time they learn that they have a passcode on their account and must locate their April 2009 bill to find the password or, otherwise, must call Windstream to get the passcode. If a customer is able to locate their April 2009 bill, included on Exhibit 3 to the Stipulated Facts, the passcode text is buried on page 3 of a four page bill under a heading reading Windstream Customer Message. The Customer Message includes a paragraph in very small type about ACH debit transactions, followed by another paragraph on the nationwide switch to digital television. The next paragraph contains a sales pitch for the DISH Network and then another paragraph which reads as follows:

Good News! Effective April 2009 Windstream is launching a new Customer Account Protection Plan (CAPP) to provide increased security to you. CAPP will help protect you against unauthorized changes or access to your account by requiring a specific passcode for a third party to change your service provider or access your account information. A CAPP passcode has been assigned to your account and appears only on this bill.



The new passcode is contained on page 1 of the bill; and, there it is described as a PIN which is necessary for online billing. The description of the passcode is deceiving.

Furthermore, Windstream continues to refuse to make available to Insight Phone some customer account information despite Insight Phone having obtained the customer's authorization. The withheld information is not proprietary to Windstream. For example, if Insight Phone has authorization from a customer to view customer account information, Insight Phone should be allowed to view the customer account number or the customer passcode or whether the customer has a freeze on the account. Windstream withholds this account information despite the customer's authorization to Insight Phone to access their information. If Insight Phone attempts to port an account with a freeze, it must submit the port request and wait up to 24 hours for Windstream to accept or deny the port request. If there is a freeze, Insight Phone will only find out about it when the port request is denied.

Windstream has argued that their withholding of certain customer account information, despite a carrier having obtained prior customer authorization to access such information, is necessary to protect against slamming. However, because the phone service in question requires Insight Phone to visit each customer's house to provide and install hardware, slamming is not possible. In other words, Insight Phone cannot change a customer's service from another provider without a customer authorizing it. It is simply not possible for Insight Phone to activate phone service without a customer's knowledge and agreement. Windstream has never notified Insight of any valid slamming allegation, either before the account number and passcode roadblocks were imposed or after.

Windstream's roadblocks have no legitimate business or operational purpose. An account number and passcode are not a business requirement to identify the customer as proved by Windstream's ability to port many numbers prior to creating the roadblocks. Instead, Windstream's roadblocks inconvenience the customers who wish to change providers, force those customers to call Windstream and allow Windstream to begin impermissible retention marketing.

### **ARGUMENT**

The clear goal of federal law is to foster competition and allow customers to freely move between telephone companies. Windstream's actions violate that the law by throwing up roadblocks and ignoring a customer's authorizations for the release of their account information. Windstream has no right to verify that a customer has authorized Insight Phone to act as its agent for the purpose of changing service providers. The ICAs in force between the two companies incorporate and further the federal law and require Windstream to follow the customer instructions to port numbers even if the customer instructions are communicated to Windstream through the customer's authorized agent, Insight Phone.

#### **I. Federal Law Fosters Competition And Customer Mobility And Prohibits Retention Marketing Efforts Upon Receipt of A Port Request.**

The FCC's interpretation of the Telecommunications Act is both reasonable and controlling. The FCC has long recognized that, during the port process, the old telephone provider, such as Windstream, has an incentive to interfere with or delay the port to the new telephone provider if only to hold onto a customer a little while longer. Furthermore, the FCC has recognized that when the new telephone provider contacts the old telephone provider regarding a port, it must, as a practical matter, give the old provider advanced

notice of the carrier change. The old provider may try to take advantage of that advanced notice to begin retention marketing before the port occurs. Accordingly, the FCC established a mandatory porting interval and, pursuant to 47 U.S.C. 222(b), protected the information of the impending port from being exploited by prohibiting retention marketing while the port is pending.

*A. Windstream Cannot Create Roadblocks to Competition and Customer Mobility*

The Telecommunications Act of 1996 facilitates competition for local exchange services and requires incumbent local exchange carriers (“ILECs”) to interconnect and exchange telephone traffic with competitors and to provide local number portability allowing customers to continue using existing telephone numbers when switching providers. 47 U.S.C. 251. Indeed, one of the principal purposes of the Telecommunications Act of 1996 “is to stimulate competition [in local telephone markets] -- preferably genuine, facilities-based competition.” *United States Telecom Association v. FCC*, 359 F.3d 554, 576 (D.C. Cir. 2004).

The FCC has long recognized that porting roadblocks thwart competition. “In practical terms, the benefits of competition will not be realized if new facilities-based entrants are unable to win customers from incumbent providers as a result of economic or operational barriers.” *Telephone Number Portability*, Second Report and Order, 12 FCC Rcd 12281 ¶4 (1997). Quite simply, a new provider cannot port a number without the cooperation of the old provider and without giving the old provider advance notice of the upcoming change. The FCC recently affirmed that “existing Commission rules have made clear that providers cannot unreasonably obstruct or delay the porting process, for

example by demanding far more information than needed to fulfill the request.” FCC June 4, 2008, *Small Entity Compliance Guide Local Number Portability*, DA 08-1317.

In that document the FCC explained that portability requires easy to use procedures, “Local number portability cannot be effective if the mechanisms used by providers to port numbers are so burdensome that they discourage use.” *Id.* Also, “Entities subject to the Commission’s LNP [local number portability] obligations may not demand information beyond what is required to validate the port request and accomplish the port.” *Id.*

Under the federal porting procedures, a customer does not need to contact his/her existing provider to request a number port. That would create an opportunity for the old provider to begin retention marketing. Instead, a number port is strictly a carrier-to-carrier process. In this case, for example, Insight Phone as the new provider initiates a number port by submitting a local service request (“LSR”) to Windstream, the incumbent carrier. The LSR serves as a request to both port the customer’s number and cancel the customer’s current service. The LSR must contain information needed to port the number. For example, Windstream cannot port a number without knowing the customer name. Windstream, however, has methodically been requiring more and more information for the LSR process not, because of any valid business purpose, but because it wants to create a situation where the customer must call Windstream directly thereby allowing Windstream to attempt to retain the customer. Despite conducting numerous ports successfully without either a customer account number or a passcode, Windstream has now added both to the LSR process.

*B. FCC Requires Only Information With A Business Purpose For Porting*

The FCC has long recognized that some information must be exchanged between carriers for a successful port but that incumbent carriers may demand more information than required in order to obstruct the port. *Telephone Number Requirements for IP-Enabled Services Providers; Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability; Numbering Resource Optimization*, WC Docket Nos. 07-243, 07-244, 04-36, CC Docket Nos. 95-116, 99-200, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531 (2007) (“Declaratory Ruling”). To ensure competition and number portability, the FCC has ruled that incumbents should require the minimum information needed to validate a customer request:

Specifically, we clarify that no entities obligated to provide LNP [local number portability] may obstruct or delay the porting process by demanding from the porting-in entity information in excess of the minimum information needed to validate the customer’s request. Declaratory Ruling at ¶2 (emphasis added).

The minimum information needed to validate a customer’s port request requires that Windstream only require information that fulfills the express business purpose of identifying the customer. Before August 1, 2008, Windstream performed hundreds of ports without requiring either customer account numbers or passcodes; therefore, Windstream does not need either customer account numbers or passcodes in order to validate a port request.

In requiring information that it does not need, Windstream violates the law and, more importantly, violates the rights of Kentucky’s consumers. Number portability exists to provide the *users* of telephone services to retain their numbers. Declaratory Ruling at

¶31. The FCC has ruled that providers must facilitate a customer's port request. Declaratory Ruling at ¶31. Writing about VoIP providers, the FCC described the duty to facilitate as follows:

By "facilitate," we mean that the interconnected VoIP provider has an affirmative legal obligation to take all steps necessary to initiate or allow a port-in or port-out itself or through its numbering partner on behalf of the interconnected VoIP customer (i.e., the "user"), subject to a valid port requests, without unreasonable delay or unreasonable procedures that have the effect of delaying or denying porting of the number. Declaratory Ruling at ¶31.

Windstream has failed in its duty to facilitate ports by requiring information that is not the minimum amount of information needed to validate the customer identification. The FCC has explained that a carrier that executes a port "should be a neutral party without any interest in the choice of carriers made by a subscriber." *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 1508, 1572 (¶109). Erecting roadblocks to a port is hardly the action of a neutral party.

Windstream may fulfill its duty to facilitate in one of two ways (1) it can return to the validation process it followed prior to August 1, 2008, or (2) it can make the information it requires available to Insight Phone on Windstream Express. To request a port on behalf of a customer, Insight Phone must obtain authorization from the customer which it does by obtaining agreement to the following language (attached as Exhibit 4 to the Stipulated Facts): "My signature below authorizes Insight Phone 2.0, or its designated agent, to access my existing account records from my local telephone company to process my order." With this authorization, Windstream has no right to keep Insight Phone from obtaining a customer account number or passcode. There is no need for the customer to

call Windstream directly for the information. If Windstream has a procedure to provide such information when the customer calls and requests it, then Windstream has no legal justification from failing to deliver the same information to Insight Phone. Porting does not require a customer to contact the incumbent; the new carrier obtains the customer's authorization and then makes the contact on behalf of the customer.

*C. FCC Has Rejected Passcodes As Used By Windstream As A Determent To Competition.*

The account number now impermissibly required for ports by Windstream may appear on each bill but the passcode appeared only once on the April 2009 bill at a time when it was of no use to Windstream customers. The passcode appeared on one page of the bill with a description that was unrelated to the actual purpose of the code, while the purpose of the passcode was erroneously explained in 8 point type several pages later. That explanation states that the passcode's purpose was to protect customers from unauthorized changes to their accounts by third parties. The Sample April 2009 bill is attached at Exhibit 3 of the Stipulated Facts. In other words, the stated purpose has absolutely nothing to do with a LSR submitted by Insight Phone. A customer must authorize Insight Phone to make a LSR prior to Insight Phone entering customer information on Windstream Express. Moreover, Insight Phone must physically enter the home of each and every customer requesting telephone service prior to effectuating the port.

The FCC does not favor passcodes as used by Windstream and has declared such use of them anticompetitive in the past. For example, when the FCC considered various methods of verification to prevent slamming, it rejected the idea of allowing personal identification numbers ("PINs") which are the same as passcodes.

Other commenters make other suggestions that, although they might be helpful in preventing slamming, are impractical to implement. For example, NCL suggests that all subscribers be assigned a personal identification number (PIN) by their interexchange carriers to use when authorizing carrier changes. We conclude that, at this time, such proposal would be impractical. **Allowing one party, the IXC, to control confirmation of PIN numbers could deter competition. Furthermore, because such PINs would be infrequently used, most subscribers would probably forget their PINs, resulting in considerable inconvenience to them.** *Second Report and Order and Further Notice of Proposed Rulemaking* (“Section 258 Order”) (¶ 75)(emphasis added).

The FCC explained that executing carriers would misuse passcodes because they have “the incentive and ability to use the verification process as a means of delaying or denying carrier change requests in order to benefit themselves or their affiliates.” (Section 258 Order at ¶ 7.)

Indeed, the FCC placed the duty to verify port orders on the carrier who is requesting the port not on the carrier who is losing a customer because verification by the ILEC could function as a “*de facto* preferred carrier ‘freeze,’ even in situations where a subscriber has not requested such a freeze.” (Section 258 Order at ¶ 8.) The FCC continued that any verification that would require the customer to communicate with the ILEC would also act as a freeze: “Executing carrier re-verification of a subscriber change request would also act as a “freeze” of a customer’s preferred carrier by requiring the customer to communicate with the executing carrier before the requested change can be implemented. As with unauthorized preferred carrier freezes, the Commission concluded that re-verification by executing carriers could serve to ‘take away control from the consumer and constrain consumer choice.’” (Section 258 Order at ¶ 8.)

Windstream’s use of passcodes does just what the FCC feared and has forbidden.

(1) It has no business purpose other than creating an impermissible roadblock. (2) Its



express purpose is to act as an impermissible verification procedure. (3) It requires customers who cannot be expected to remember it to call Windstream.

Finally, while Windstream may argue that the FCC explicitly permitted the use of passcodes and account numbers, the FCC's order does not support Windstream's insistence that this information must be obtained from the customer. The purpose of this information is to validate the customer's identity, in the same way as name and address information, not to demonstrate the customer's authorization. Thus, the only requirement the FCC allows a carrier to impose is that the passcode and account number provided must match the name, address and telephone number associated with the customer. The FCC's order does not in any way permit a carrier to insist that this information must be obtained from the customer. Indeed, when, as is true in this case, the passcode was provided only once and in such a manner as to make it unlikely the customer even would notice, the only practical way to get the information is for Windstream to provide it.

*D. Retention Marketing Is Illegal Prior To Port*

When Congress passed the Telecommunications Act of 1996, it knew that opening the local exchange market to competition would require cooperation and coordination between competing carriers and that porting could not be achieved without carriers sharing certain proprietary information with their competitors. Access to such information creates a clear conflict between an ILEC's ministerial obligation to discharge their statutory duties and their incentive to use competitors' sensitive information to advance their own business. To protect against this, Congress added §222(b):

A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such

purpose, and shall not use such information for its own marketing efforts.  
47 U.S.C. §222(b).

This section makes it illegal for Windstream to use the information that Insight Phone is porting a customer number for any purpose while that port is pending. See, e.g., *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 1508, 1572 (¶106) in which the FCC held that a submitting carrier's change request is proprietary information subject to §222(b) because the carrier requesting the change must submit the information in order to carry out the customer's wishes. The FCC explained, "When an executing carrier receives a carrier change request, §222(b) prohibits the executing carrier from using that information to market services to the consumer [who is requesting the carrier change]." *Id.* See also, *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409 ¶77 (1999). Carrier-to-carrier information includes the information Windstream obtains when Insight Phone uses Windstream Express to obtain customer information before a port. *Bright House Networks, LLC v. Verizon Cal., Inc.*, 23 FCC Rcd 10704 (2008), *aff'd*, *Verizon California v. FCC*, 555 F.3d 270 (D.C. Cir. Feb. 10, 2009).

When Windstream adds account numbers and passcodes as requirements for ports, despite executing numerous ports without either, it creates a situation whereby many customers must contact Windstream. Customers do not know their account numbers and passcodes and cannot obtain their passcodes from any other source except a telephone call to Windstream unless they happened to keep their April 2009 bill and

know to look there. If customers are forced to call Windstream, the porting process is no longer the neutral activity set out by the FCC. As explained above, if Windstream is going to require such information, Windstream must make that information available to Insight Phone over Windstream Express, it cannot restrict the information to force a customer call, to do so subverts the entire port system.

**II. The ICAs Require Windstream's Compliance With Federal Law And Forbids Windstream's Validation of Port Requests.**

Windstream's actions violate state law as well as federal law.

Section 17 of the ICA makes it clear that Windstream must not validate a customer's authorization by Insight Phone but that its role in a port is to provide the requested information even if that information is Customer Proprietary Network Information ("CPNI"). If Windstream believes that Insight Phone does not have proper authorization, 17.4 describes the actions Windstream may take.

Windstream has never formally contacted Insight Phone with any complaint regarding any specific customer authorization except for two customers which Windstream first discussed with Insight Phone in a letter dated September 8, 2008, attached as Exhibit 5 to the Stipulated Facts. The letter is dated after Insight Phone filed its Formal Complaint in this action. Insight Phone responded to Windstream's formal requests in a letter dated September 12, 2008, and attached as Exhibit 6 to the Stipulated Facts. In Insight Phone's response it noted that Customer Number 1 never changed service to Insight Phone. Instead, the customer placed an order to port but cancelled the order before the port was made. Obviously, no slamming occurred as no port occurred. Customer Number 2 ported a number to Insight Phone. Once an Insight Phone customer,

the customer changed the name on the account. When the customer later placed an order with Windstream to port back to it several weeks later, the names did not match. Without a name match, Insight Phone initially rejected the LSR. The matter was cleared up and the port went through. Again, this was not a slamming issue, it was a complaint stemming from the LSR rejection due to the different names.

The letters attached as Exhibits 5 and 6 to the Stipulated Facts illustrate that a procedure is in place as set out in the ICAs for Windstream to explore customer complaints, if any. Windstream need not impermissibly validate customer port requests. The letters also illustrate that Windstream has no credible slamming complaint against Insight Phone that it has communicated. This is no surprise since Insight Phone does not and cannot slam. In order to port a number, Insight Phone not only gets authorization to examine information and place the order but it also travels to customers' houses, knocks on their doors, confirms the order and installs hardware necessary for the port.

Just as under federal law, the ICAs recognize that Windstream must maintain neutral status and must provide information to Insight Phone when Insight Phone represents that it has authority for that information. Kentucky regulations forbid Windstream, as an ILEC, from independently verifying Insight Phone's representations. 807 KAR 5:062, Section 3. This regulation was enacted concurrent with the Telecommunication Act of 1996 and like the Act was intended to remedy the anticompetitive ILEC practice of refusing to permit a carrier change until the ILEC had consulted with their customers themselves. Windstream's passcodes violate this section by *de facto* requiring a customer call to Windstream.

### **III. Windstream Cannot Justify Withholding Account Numbers and Passcodes From Insight.**

If a customer authorizes Insight Phone to obtain customer information, Windstream must supply that information to Insight Phone. Windstream has no right under federal law, state law or the ICAs to verify the request or verify the authorization. Despite the customer's authorization provided to Insight Phone, Windstream does not make available all of the information. Windstream withholds from Insight Phone any information about a customer account number, a customer passcode and even a customer freeze despite Insight Phone having obtained the customer's authorization. Not one of these three pieces of information can be properly withheld. If Windstream wants to require passcodes and account numbers for ports, it must make that information available to Insight Phone on Windstream Express.

Section 17.4 of the ICAs state:

Subject to applicable rules, orders, and decisions, Windstream will provide Insight with access to Customer Proprietary Network Information (CPNI) for Windstream End Users upon Insight providing Windstream a signed blanket Letter of Agency (LOA) for Windstream's Customer of record, based on Insight's representation that subscriber has authorized Insight to obtain such CPNI.

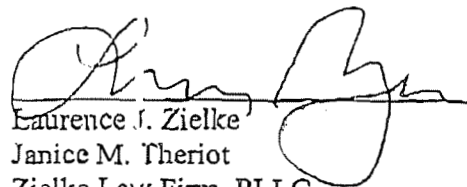
CPNI is the most protected form of information held by Windstream. If Windstream is required to hand over CPNI to Insight Phone then it cannot justify withholding any customer information. CPNI is defined as information contained in the bills received by customers. 47 U.S.C. §222(h)(1)(B). As shown by Exhibit 3 to the Stipulated Facts, both account numbers and passcodes are contained in the bills. Once a customer has authorized Insight Phone to obtain this information, Windstream must provide it.

In addition to withholding account numbers and passcodes, Windstream also withholds information about whether an account has a freeze on it. Insight Phone cannot obtain that information through Windstream Express despite having authority from a customer. This is another type of CPNI, and therefore Insight is entitled to access to this information once it has obtained customer authorization under the terms of the ICA. Insight Phone, however, can only obtain freeze information by submitting a port request and waiting to see if it is rejected. Windstream's duty to provide access to customer information is not dependent on a port request. It stems from Insight Phone's representation to Windstream that it has customer authorization. At that point, Windstream must allow access to the information.

#### CONCLUSION

Insight Phone respectfully requests that this Commission order Windstream to either stop requiring account numbers and passcodes for ports or, if it requires account numbers and passcodes, to provide them to Insight Phone on its Windstream Express interface when Insight Phone has customer authorization to view customer information. Additionally, Insight Phone respectfully requests that the existence of a customer freeze be revealed on Windstream Express without requiring a port order when Insight Phone has customer authorization to view customer information.

Respectfully Submitted,



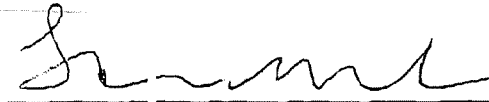
Laurence J. Zielke  
Janice M. Theriot  
Zielke Law Firm, PLLC  
Meidinger Tower, Suite 1250  
462 South 4<sup>th</sup> Street, Suite 1250  
Louisville, KY 40202

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via U.S. Mail and email on this the 19th day of February 2010 upon:

Douglas F. Brent  
Stoll, Keenon & Ogden PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, KY 40202  
douglas.brent@skofirm.com

Mark R. Overstreet  
Stites & Harbison PLLC  
421 West Main Street  
P.O. Box 634  
Frankfort, KY 40602-0634  
moverstreet@stites.com



*Counsel for Insight Phone*