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**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

**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. 2008-00335
AND WINDSTREAM KENTUCKY WEST, LLC TO)
PROVIDE ACCOUNT NUMBERS WHEN)
AUTHORIZED BY CUSTOMERS IF IT REQUESTS AN)
ACCOUNT NUMBER FOR PORTS)**

**INITIAL BRIEF BY WINDSTREAM KENTUCKY EAST, LLC AND WINDSTREAM
KENTUCKY WEST, LLC**

Windstream Kentucky East, LLC ("Windstream East") and Windstream Kentucky West, LLC ("Windstream West") (collectively, "Windstream") submit the following Initial Brief in support of their opposition to the Formal Complaint and Motion for Emergency Hearing ("Complaint") filed by Insight Phone of Kentucky, LLC ("Insight Phone") on August 13, 2008.¹

I. INTRODUCTION

On August 13, 2008, Insight Phone filed its Complaint requesting emergency relief based on what it described as Windstream's failure to provide account numbers to Insight Phone and Windstream's refusal to provide account freeze information. (Insight Phone August 13, 2008 Letter.) Insight Phone erroneously asserts that Windstream's actions violate federal law and will prevent customers from switching telephone providers. Insight Phone's arguments are not borne out by the facts, the law, or sound public policy. Most notably, Windstream's validation policy that is at the center of this proceeding has shown to result in no unreasonable delay or

¹ Big River Telephone Company ("Big River") also filed a Motion for Full Intervention on September 4, 2008, and for purposes of this Initial Brief, Windstream East and Windstream West intend their arguments addressed to Insight Phone to also address the issues raised by Big River.

obstruction to Insight Phone's port requests. Further, the facts support that Windstream's policy is particularly prudent given Insight Phone's failure to maintain customer authorization practices in compliance with applicable Federal Communications Commission ("FCC") regulations.

Insight Phone has the burden of proof in this matter,² and it has failed to meet that burden. Further, it should be noted that both provisions of law on which Insight Phone bases its Complaint (KRS 278.54611 and 278.530) provide no sufficient jurisdiction over the matters raised therein. Specifically, the first provision addresses cellular providers and the other addresses compelling connections with telephone lines; neither of these is at issue in this proceeding. Insight Phone's Complaint raises issues only as to Windstream's validation process on port requests and requests to access CPNI. Indeed, the fact that Insight Phone may not be obtaining the required verified customer authorizations before it submits port requests to Windstream casts doubt about whether Insight Phone should be permitted at all to complain about Windstream's validation process which was established to help ensure that requesting carriers like Insight Phone do not access Windstream's customer account information without proper customer authorization.

Insight Phone's Complaint requested that the Commission compel Windstream East and Windstream West to forego their customer protection policy, make freeze information available, take action to prevent a breach of the parties' interconnection agreements, and award damages including attorney's fees and costs. In the case of discontinuance of Windstream's customer protection policy, neither the law nor sound public policy dictates such a result. With respect to freeze information, no such relief is warranted as Windstream's system already makes freeze information available. Additionally, the facts demonstrate that neither Windstream East nor

² See *Personnel Bd. v. Heck*, 725 S.W.2d 13, 17 (Ky. App. 1986) ("In administrative proceedings, the general rule is that an applicant for relief, benefits, or a privilege has the burden of proof.").

Windstream West has acted in violation of its interconnection agreement, although the facts show that, because Insight Phone has failed to comply with applicable FCC rules regarding verified customer authorizations, its actions are in breach of the parties' interconnection agreements which require in Section 17.1 compliance with "applicable state or federal laws and regulations in obtaining [customer] authorization..." Finally, the Commission is arguably without jurisdiction to award money damages, despite that Insight Phone otherwise has failed to prove the existence of any viable claim for money damages. Very simply, Insight Phone has wholly failed to satisfy its burden of proof in this matter, and its relief should be denied.

II. STATEMENT OF THE CASE AND FACTS

On January 4, 2010, Insight Phone, Windstream East, and Windstream West filed a set of stipulated facts on which briefs in this matter would be supported. Consistent with the parties' stipulated facts, Windstream East and Windstream West serve territories in common with some of those served by Insight Phone. (Stipulated Facts ¶18.) Accordingly, Insight Phone has an interconnection agreement with each Windstream East and Windstream West. (Stipulated Facts ¶3.) Because Insight Phone provides service to customers in overlapping territories with Windstream East and Windstream West and maintains interconnection agreements with the Windstream companies, Insight Phone submits porting requests to Windstream East and Windstream West to change the customers' service to Insight Phone's service. (Stipulated Facts ¶5.) Insight Phone may also desire to access certain Windstream customer account information in order to submit port requests or to market its service to Windstream customers.

In order to process such porting and account information requests, Windstream East and Windstream West maintain an interface called "Windstream Express" which is used by Windstream affiliates across sixteen states, including Windstream East and Windstream West in

Kentucky. (Stipulated Facts ¶¶5 and 17.) One purpose of Windstream Express is to allow requesting carriers to submit orders to change the customers' service provider or to access some of the Windstream customers' Customer Proprietary Network Information ("CPNI") needed to complete the service provider change requests. (Stipulated Facts ¶5.)

Prior to August 1, 2008, carriers attempting to access Windstream Express provided only the customer's telephone number and checked a box verifying that they had previously obtained a valid customer authorization. (Stipulated Facts ¶23.) However, Windstream affiliates recognized that telephone numbers may be available through a variety of public sources including association directories, business cards, websites, and phonebooks. (Stipulated Facts ¶24.) They further recognized that carriers accessing Windstream Express may not have obtained proper customer authorization or in other cases may use agents, some of whom may not be telecommunications carriers, to perform ordering functions through Windstream Express including submission of orders both for CPNI access and for service provider changes. (See, *e.g.*, Stipulated Facts ¶19 regarding Insight Phone's agency relationship.) In the case of Insight Phone, it uses an ordering agent called, "Accenture" which acts as an agent for other carriers in the industry and which also maintains some of its operations outside of the United States. (Stipulated Facts ¶¶19, 20, and 22.) Neither Windstream West nor Windstream East has an interconnection agreement with Accenture. (Stipulated Facts ¶21.)

In recognizing their obligation to better protect their customers' account information including their CPNI and to help guard against unauthorized carrier changes, Windstream prudently implemented the account number and passcode requirements that are the primary focus of Insight Phone's Complaint in this proceeding. Windstream's validation policy was implemented by Windstream affiliates throughout all states where Windstream Express is used.

(Stipulated Facts ¶25.) Consequently, carriers using Windstream Express such as Insight Phone and Big River were notified that beginning August 1, 2008, they would be required to provide account numbers for all port requests, and on November 2, 2008, the policy was more fully implemented to require provision of account numbers for requests to access CPNI. (Stipulated Facts ¶¶9 and 13) Thereafter, Windstream's validation policy was fully implemented to require requesting carriers to validate any orders they or their ordering agents submit through Windstream Express by providing an account number and passcode to access a Windstream customer's CPNI or to make changes on the customer's account. (Stipulated Facts ¶¶5 and 7.)

In opposing the implementation of the Windstream Express account number/passcode policy, Insight Phone requested that Windstream Express make the account numbers available to requesting carriers. (Stipulated Facts ¶11.) Windstream East and Windstream West declined to make the validation fields available and explained that doing so would provide none of the intended protections against unauthorized account changes. (Stipulated Facts ¶12.) Further, Windstream notes that Windstream Express does not provide a requesting carrier with access to all of a customer's CPNI or account information and that one of the purposes of Windstream Express merely is to allow requesting carriers to access some of a customer's information needed to complete a service provider change request. (Stipulated Facts ¶5.) Windstream Express does not provide requesting carriers with a customer's account number or passcode for the reason that these two pieces of customer information are used to validate port requests and requests to access customers' CPNI, and such requests are rejected if they do not include the accurate validation information. (Stipulated Facts ¶¶5 and 6.)³

³ Although not one of Insight Phone's primary contentions in this proceeding, it has also alleged that Windstream East and Windstream West have "refus[ed] to provide account freeze information." (Insight August 13, 2008 letter) Insight Phone's assertion is in error. Windstream Express does provide requesting carriers with information regarding a preferred carrier freeze on a customer's account. (Stipulated Facts ¶6) More accurately, Insight Phone's complaint

Insight Phone opposes Windstream's ordering validation process arguing that it is incapable of slamming customers and that Windstream's account number/passcode policy unreasonably hinders porting activity. (Complaint ¶¶21 and 24.) The facts do not support either of Insight Phone's contentions.

First, regardless of whether Insight Phone sends a representative to a customer's home to install service (Stipulated Facts ¶27), the question remains whether Insight Phone has obtained valid customer authorization prior to the time that Insight Phone has accessed the customer's account or CPNI through Windstream Express. If a requesting carrier has not obtained valid customer authorization before it accesses a customer's CPNI or submits a request to change a customer's service provider, then the requesting carrier has slammed the customer and is considered by the FCC to be an unauthorized carrier. Insight Phone is indeed capable of slamming customers and submitting unauthorized port requests. Windstream states that Insight Phone submitted port requests for two Lexington, Kentucky customers who subsequently contacted Windstream East to state that they either had not authorized or did not understand that they were authorizing Insight Phone to change their service provider. (Stipulated Facts ¶30.) For the reasons explained herein, Windstream East and Windstream West believe that had their validation process been in place, it would have helped prevent against this result.

Second, the facts do not support that Windstream's validation process unreasonably hinders port activity. For instance, prior to the policy's implementation, Windstream asserts that approximately 24% of Insight Phone's total port orders were rejected during the period of May 28, 2008 through August 28, 2008. (Stipulated Facts ¶15.) Thus, a certain number of Insight

on this issue seems to be one of timing in that Windstream Express provides the information regarding an account freeze after the time that a requesting carrier such as Insight Phone accesses Windstream Express and submits a request to make a change on the customer's account. (*Id.*)

Phone port orders were rejected anyway due to reasons unassociated with Windstream's validation policy which was subsequently implemented. By way of comparison, Windstream notes that its records reflect that for the week of August 29, 2008, Insight Phone submitted 229 port requests to Windstream of which 11% were rejected for the reason that they lacked a valid account number. (Stipulated Facts ¶16.) Further, Windstream's records reflect that of the 53 port requests submitted by Big River for the same week, 11% were rejected for the same reason. (*Id.*) Additionally, Windstream states that its affiliates across sixteen states rejected 10% of all orders submitted during the same one-week time period for the reason that the orders did not contain valid account numbers. (*Id.*) Finally, Windstream states that during the period from October 1, 2008 through December 31, 2008, Insight Phone submitted 3,587 port requests to Windstream Express, of which only 85 were rejected either for no account number, a typographical error with the account number, or an incorrect account number. (Stipulated Facts ¶26.) Accordingly, the actual percentage rejection rate for reasons directly associated with Windstream's account number policy was 2.4%. (*Id.*)

Such a negligible rejection rate hardly supports Insight Phone's contention that Windstream's validation policy creates unreasonable delays or obstructions in the porting process. To the contrary, the facts that the vast majority of Insight Phone's port requests have been shown to have been processed under Windstream's validation process as well as the facts surrounding Windstream's asserted prior experiences with unauthorized account changes (see, Stipulated Facts ¶30), support that the Windstream Express account number/passcode validation process strikes an appropriate balance between customer privacy protections and the need for reasonable porting processes.

III. LEGAL ARGUMENT

Windstream's account number/passcode validation process about which Insight Phone complains is consistent across sixteen states, and the facts demonstrate that the overwhelming majority of port requests between the Windstream companies and Insight Phone are processed without any delay or obstruction as a result of Windstream's process. As demonstrated herein, the "four fields" validation process used by Windstream East and Windstream West is reasonable and lawful and strikes the appropriate balance between the need to safeguard customer information and at the same time provide requesting carriers with access to reasonable porting processes.

A. Background

Prior to August 1, 2008, a requesting carrier such as Big River or Insight Phone needed to provide a telephone number to access Windstream Express and check a box verifying that it had previously obtained a valid customer authorization. (Stipulated Facts ¶¶23.) Since August 1, 2008, Windstream has increased the protection of its customers' account information by implementing the "four fields" validation process at issue in this proceeding. (Stipulated Facts ¶¶5, 9, and 13.) Under this process, requesting carriers are required to provide a valid customer account number and passcode in addition to the telephone number assigned to that customer's account in order to process requests through Windstream Express. (*Id.* ¶5.)

Windstream East and Windstream West believe their "four fields" validation process is particularly prudent given increasing reports in the marketplace of identity theft and privacy infractions. The Windstream companies have a responsibility to improve the security and protection of their customers' information. (See, §222(a) of the Act imposing a general duty on telecommunications carriers to protect the confidentiality of their customers' proprietary information.) Without proper validation processes, Windstream believes that a requesting carrier

(or its agent or possibly an overzealous sales representative) could misrepresent that the requesting carrier had obtained a valid customer authorization and still gain unauthorized access to a Windstream customer's account just on the basis of entering a telephone number into Windstream Express. Telephone numbers are generally publicly available through sources such as association directories, business cards, websites, or phone books and may be obtained without any direct communication with a prospective customer. (Stipulated Facts ¶24.) The use of public information like telephone numbers to gain unauthorized access to Windstream customer information is particularly concerning considering that some requesting carriers may use third-party vendors, which are neither telecommunications carriers nor which may operate in a manner consistent with United States privacy laws, to submit orders on the carriers' behalf to Windstream Express.

In seeking to improve the security of their customers' accounts, Windstream relied on the FCC's declaratory ruling regarding simple ports (FCC 07-188), which addressed the FCC's desire to balance "consumer concerns about slamming with competitors' interest in ensuring that LNP may not be used in anticompetitive manner to inhibit consumer choice." (*Id.* at ¶48) In its declaratory ruling, the FCC found that the "four fields" (telephone number, account number, ZIP code, and passcode) that actually had been proposed by competitive carriers provided sufficient information on which to process simple ports and would "sufficiently protect consumers from slamming" while also helping to "decrease the validation error rate" with port requests. (*Id.* at ¶49.)

Consistent with the FCC's order, Windstream determined that requiring these same four fields for use in validating all orders submitted to Windstream Express is competitively reasonable and offers increased protection to customers against unauthorized access to their

accounts. Consequently, on August 1, 2008, Windstream implemented the policy about which Insight and Big River now complain. (Stipulated Facts ¶¶9 - 10.) Windstream's policy merely implemented a process requiring requesting carriers to provide an account number and passcode (instead of just a publicly-obtained telephone number) on all port requests and requests to access customer CPNI. (Stipulated Facts ¶¶5 and 23.)

As explained below, Windstream's policy better safeguards customer information by requiring carriers and their agents accessing Windstream Express to supply information that is indicative of express customer authorization as opposed to information like a telephone number, which may be readily obtained from public sources. Windstream's policy is not only advisable and entirely consistent with the FCC's order but also helps ensure direct communication with and proper authorization from a prospective customer have occurred and been obtained prior to a requesting carrier accessing any account information through Windstream Express. Most significantly, Windstream's policy results in no unreasonable delay or obstruction to the porting process.

B. Issues to be Addressed

As part of their filing on January 4, 2010, the parties determined that the three issues to be addressed in this matter include the following: (a) whether Windstream may require account numbers and/or passcodes for access to 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.

With respect to (a), Windstream's use of account numbers and passcodes is expressly supported by the FCC's "four fields" order and otherwise advisable given, for example, the failure of Insight Phone to maintain processes obtaining verified customer authorization in compliance with FCC regulations. Additionally, Windstream should not be required to provide requesting carriers with the very information being used to validate their orders; to the extent that this issue is currently being addressed by the FCC, the Kentucky Commission should not risk a ruling with an inconsistent result and instead should defer to the outcome of the FCC's decision. Finally, the issue in (c) is moot as the facts demonstrate that Windstream Express does provide requesting carriers with information regarding whether a customer has placed a preferred carrier freeze on his service.

1. Windstream may require account numbers and passcodes for access to CPNI and other material account information and to request changes in service providers (e.g., port requests).

The crux of Insight Phone's Complaint is its incorrect assertion that Windstream's "four fields" validation process is a violation of Section 251 of the Federal Telecommunications Act of 1996 ("the Act") which Insight Phone states requires "that providers not unreasonably obstruct or delay the porting process." (Complaint ¶4.) Insight Phone has failed to demonstrate that Windstream's process presents any unreasonable obstruction to the porting process. In fact, after implementation of Windstream's policy, Windstream states that during the period from October 1, 2008 through December 31, 2008, Insight Phone submitted a total of 3,587 port requests to Windstream Express, of which only 2.4% were rejected for reasons directly associated with an account number error on the order. (Stipulated Facts ¶26.) Admittedly, Insight Phone readily acknowledges that "[t]housands of Windstream customers have chosen to switch their telephone service to Insight." (Insight Phone July 31, 2008 letter attached to its Emergency Request.)

Given its boasted success and that it has continued to submit thousands of port request orders to Windstream, Insight Phone's claims regarding the suppressive effect of Windstream's policy is dubious.

Contrary to Insight Phone's assertions, Windstream's policy is fully supported by the FCC's "four fields" order as discussed previously, which alone provides the legal basis to conclude that Windstream may require account numbers and/or passcodes for access to CPNI and for port requests. Further, the facts demonstrate that carriers like Insight Phone are capable of submitting unauthorized requests and also may not maintain FCC-compliant customer authorization practices. Therefore, the Commission should conclude further that not only may Windstream require the use of account numbers and/or passcodes but also that Windstream should require carriers like Insight Phone to validate their orders to ensure that they are accessing customer accounts in an authorized manner.

Pursuant to the FCC's regulations, Insight Phone may only submit a port request to Windstream to change a customer's local, intra-LATA, and/or inter-LATA service provider after Insight Phone has obtained the customer's express authorization in a manner and form that comply with federal regulations. (47 C.F.R. §§ 64.1120, 64.1130.)⁴ Insight Phone violates the FCC's slamming rules if it fails to obtain an affirmative customer authorization verified in compliance with the FCC's regulations **prior** to submitting the change request to Windstream or at all.

The FCC expressly provides that requesting carriers must obtain proper individual customer authorization **prior** to the time that they submit a request to the customer's existing

⁴ Although the issues herein focus on port requests, sometimes called "Local Service Requests" or "LSRs," Section 222(c)(2) of the Act requires that CPNI only be disclosed upon "affirmative written request by the customer." Therefore, the statutory requirement for accessing CPNI is even more stringent than the requirements set forth in §64.1120 of the FCC's rules for verifying port requests.

service provider. In 47 CFR §64.1100(c), for example, the FCC defines "authorized carrier" as a telecommunications carrier that submits a change in service provider, on behalf of a customer, "with the subscriber's authorization verified in accordance with the procedures specified in this part." (Emphasis supplied) Similarly, an "unauthorized carrier" is one that submits a change but "fails to obtain the subscriber's authorization" verified in accordance with the FCC's rules. (47 CFR §64.1100(d).)⁵

Section 64.1120 of the FCC's rules sets forth, in part, the verification procedures to be used by requesting carriers. Subsection (a) of §64.1120 requires explicitly that no telecommunications carrier shall submit a change on the behalf of a customer except in accordance with the procedures prescribed in that subpart. Specifically, §64.1120(a)(1) provides in pertinent part as follows:

- (1) No submitting carrier shall submit a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service **prior** to obtaining:
 - (i) Authorization from the subscriber; and
 - (ii) Verification of that authorization in accordance with the procedures prescribed in this section...

Therefore, Insight Phone's contention in its Complaint and Big River's contention in its Intervention that each is incapable of slamming customers is wholly without merit. (Complaint ¶21; Big River Intervention p.2.) In particular, Insight Phone asserts that a carrier like itself who physically goes to a customer's home to install wiring and equipment cannot slam a customer because the service installation cannot occur without the customer's consent. (*Id.*) Yet, Insight

⁵ Thus, the contention by Insight Phone and Big River that slamming is not an issue for them due to the nature of their services and because they must activate services at the customers' locations is misguided and ignores the FCC's express requirements. Insight Phone and Big River are unauthorized carriers and slam customers when they submit port requests to Windstream (something that occurs well prior to the time that they activate or install service at the customers' locations) without having obtained the customer verified authorization in advance. (47 CFR §64.1120.) Further, Windstream submits that given the positions of Insight Phone and Big River on this issue regarding port requests also may indicate that they similarly are not obtaining the required written customer authorization prior to accessing a Windstream customer's CPNI. (§222(c)(2) of the Act.)

Phone's assertion ignores the fundamental requirement as set forth by the FCC that a requesting carrier like Insight Phone must necessarily have obtained the customer's verified authorization to change his service provider prior to the time that the requesting carrier submits the port request to the customer's current service provider. In this instance, that means that where Insight Phone or Big River submits a request on Windstream Express to change a customer's service but does not obtain the customer's verified authorization until such time as Insight Phone or Big River subsequently visits the customer's home to install service, it has acted unlawfully under the FCC's rules and submitted an unauthorized carrier change request to Windstream.

The FCC's rules set forth a required process which Insight Phone is capable violating, and the facts support that Insight Phone is capable of slamming customers. For instance, Windstream East's records reflect that Insight Phone submitted port requests to Windstream Express for two Lexington, Kentucky customers who subsequently contacted Windstream East to state that they either had not authorized or did not understand that they were authorizing Insight Phone to change their service provider. (Stipulated Facts ¶30.) In one of the cases, Windstream East's records reflect that Insight Phone attempted to port one customer three times: (1) The customer contacted Windstream East to cancel his port to Insight Phone on February 13, 2008, and Insight Phone resubmitted a port request to Windstream East for this customer on February 14, 2008; (2) Windstream East canceled the port request on February 29, 2008 per the customer's request; and (3) Insight Phone resubmitted a port request for the customer on April 10, 2008, and the customer requested that Windstream cancel the port request on April 30, 2008. (*Id.*)

Windstream's validation process is intended to prevent this type of customer confusion by ensuring that requesting carriers like Insight Phone are not submitting unauthorized orders to

Windstream. By requiring requesting carriers to validate their orders by providing the customer's account number and passcode (information which must be obtained directly from customers and are not readily available from public sources), Windstream's process helps ensure that requesting carriers are communicating with customers in advance and not accessing customers' accounts or CPNI under false pretenses.

Significantly, even assuming that Insight Phone were obtaining customer authorizations prior to the time it submits orders to Windstream, the facts show that Insight Phone's written authorization forms are not in compliance with the FCC's rules and may result in unauthorized port requests.⁶ For example, Insight Phone attached to the Complaint its purported individual customer authorization form called "Letter of Agency for Insight Phone 2.0 Service." Even if Insight Phone were obtaining this form from each customer in advance of processing a carrier change on behalf of that customer, Insight Phone's purported form does not comply with the FCC rules. Specifically, Section 64.1130(b) of the FCC's Rules requires that a verified customer authorization cannot include language other than that expressly specified as language required to

⁶ While customer authorizations sometimes may be called letters of agency or letters of authorizations and abbreviated as "LOAs," they should not be confused (as Insight does - see, ¶7 of the Complaint) with Insight Phone's blanket "letter of agency" intended to refer only to a general agency agreement between Insight Phone and its third-party vendor, Accenture. For instance, Insight Phone asserts in Paragraph 7 of its Complaint its belief that it has been authorized to access Windstream customers' CPNI by virtue of a "signed blanket LOA" since January 2, 2008. Again in Paragraph 12 of its Complaint, Insight Phone incorrectly likens its blanket agency letter with Accenture to the type of individual verified customer authorizations required by the FCC and §222 of the Act for port requests and access to CPNI, respectively. While the terms may be confusing and both may be referred to as "LOAs," the concepts to which they refer are distinct, and the distinction is critical to understanding the error in Insight Phone's arguments. For example, the blanket letter of agency between Insight Phone and Accenture only serves to authorize Accenture to submit orders to Windstream Express on Insight Phone's behalf. It is in no way, however, a lawful substitute for the individual verified customer authorizations required under §64.1120 of the FCC's rules or §222 of the Act. Rather, it is purely a creation of the parties' interconnection agreements, and without the blanket agency letter, Windstream Express would not recognize orders submitted by Accenture because it is not a telecommunications carrier interconnected with Windstream West or Windstream East. (Stipulated Facts ¶21.) However, in contrast to the blanket letter of agency with Accenture, the second "LOA" concept refers to the individual customer authorizations required by the FCC in §64.1120 to be obtained from every customer for whom Insight Phone submits a port request to Windstream Express or by §222(c)(2) of the Act for every request Insight Phone submits to access a Windstream customer's CPNI. In short, despite statements in the Complaint to the contrary, the blanket agency letter between Accenture and Insight Phone in no way absolves Insight Phone from satisfying its lawful obligation to obtain customer authorizations from individual customers before accessing their CPNI or submitting port requests to change their service provider.

fulfill the “sole purpose” of authorizing a carrier to initiate a preferred carrier change.⁷ Language in Insight’s customer authorization form – such as text authorizing fees for switching service and text binding the customer to specified Insight Phone terms and conditions – falls outside of this sole purpose.⁸ Therefore, Insight Phone’s invalid authorization form not only raises questions about whether Insight Phone is authorized to submit any port requests to Windstream Express, Insight Phone’s noncompliance further raises questions regarding Insight Phone’s ability to complain about Windstream’s order validation process which is designed solely to help ensure that requesting carriers like Insight Phone have obtained valid customer authorizations prior to submitting orders on Windstream Express.

In summary, Windstream’s account number/passcode validation process relies directly on the FCC’s “four fields” order which declares it reasonable to require requesting carriers to provide the four fields of customer telephone number, account number, zip code, and passcode in order to process simple ports. The FCC recognized that the “four fields” approach balances customer protections with carrier porting efficiencies. This balance is evidenced in this proceeding through the fact that the impact of Windstream’s validation policy on Insight Phone’s order rejection rate in Windstream Express has been negligible. Additionally, this proceeding has raised questions regarding whether Insight Phone and Big River obtain the verified customer

⁷ 47 C.F.R. § 64.1130(b) (“The letter of agency shall . . . contain[] only the authorizing language described in paragraph (e) of this section having the sole purpose of authorizing a telecommunications carrier to initiate a preferred carrier change”). Section 64.1130(e) of the FCC’s rules states that the Customer LOA must contain language confirming: “(1) The subscriber’s billing name and address and each telephone number to be covered by the preferred carrier change order; (2) The decision to change the preferred carrier from the current telecommunications carrier to the soliciting telecommunications carrier; (3) That the subscriber designates [insert the name of the submitting carrier] to act as the subscriber’s agent for the preferred carrier change; (4) That the subscriber understands that only one telecommunications carrier may be designated as the subscriber’s interstate or interLATA preferred interexchange carrier for any one telephone number. . . ; and (5) That the subscriber may consult with the carrier as to whether a fee will apply to the change in the subscriber’s preferred carrier.” *Id.* at § 64.1130(e).

⁸ See § 64.1130(e) (failing to include these items in the list of permissible authorizing language).

authorizations required by law to access customers' CPNI or submit port requests on their behalf. Accordingly, the law and the facts support that Windstream not only may, but should, enforce its validation policy to ensure that the orders these carriers are submitting to Windstream Express for individual customer accounts have been authorized, in fact, by those individual customers.

2. Insight Phone should not be provided the "answers to the test," and Windstream should not provide Insight Phone with the customers' account numbers and passcodes even if Insight Phone has represented that the customers have authorized Insight Phone to access their CPNI.

Insight Phone suggests that Windstream Express simply should make available the account number and passcode information used to validate the orders submitted by Insight Phone. As an initial matter, Insight Phone suggests that doing so is appropriate where it has represented to Windstream that the customers have authorized Insight Phone to access their CPNI. Section 222(c)(2) of the Act requires that a customer's CPNI be disclosed only upon affirmative written request by the customer. Yet, in the preceding section, Windstream addressed its concerns with respect to the manner in which Insight Phone may not be obtaining proper customer authorizations.

Insight Phone argues further that the account numbers and passcodes should be made available to it both under Section 17.5 of the parties' interconnection agreements and §222(c)(2) of the Act. (Complaint ¶¶ 6 and 13.) Insight Phone's arguments are premised on its erroneous assertion that account numbers and passcodes are CPNI. Insight Phone is incorrect in its assumption that account numbers and passcodes are CPNI under §222(h)(1)(B) which it defines as information contained in the bills pertaining to telephone exchange service or toll service received. CPNI relates to the type and amount of service(s) ordered by the customer. Account numbers and passcodes, however, relate to neither and are not CPNI. Account numbers, for example, are merely numeric identifiers used by Windstream's systems and assigned to

customers. It should also be noted that the FCC defines “account information” separately from CPNI. (47 CFR §64.2003(a).) Further, passcodes are not CPNI and instead may be considered personally identifiable information (“PII”), which the FCC has determined is entitled to the maximum level of safeguarding and protection from disclosure.⁹ Simply put, account numbers and passcodes are not CPNI. They are fields of account information used by Windstream to protect a customer’s CPNI from being disclosed in unauthorized manner and, in the particular case of passcodes, are PII which should not be released to requesting carriers.

Insight Phone further asserts that it should be provided the account numbers and passcode validation information for the reason that carriers cannot demand information beyond what is required to validate port requests and accomplish the ports. (Complaint ¶16.) Interestingly, the very validation fields Windstream is requesting that Insight Phone provide – account numbers and passcodes – are fields specifically allowed by the FCC for submission of simple ports. (*Supra.*)

Insight Phone and Big River also suggest that they should be provided the information for the reason that Windstream’s validation process “frustrates” customers’ ability to choose a telephone provider (Complaint ¶24) and otherwise is ill-advised since account numbers typically are not committed to a customer’s memory (Big River Intervention p. 2). Neither argument has merit. First, customers have account numbers readily available through monthly billing statements, online banking records, and Windstream customer service. (Stipulated Facts ¶7.) Similarly with respect to passcodes, they are the same as those assigned to Windstream customers to initiate online billing, and customers were provided clear notice regarding the

⁹ See, e.g., *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115; WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 ¶ 30 & n. 99 (2007).

passcodes in their April 2009 invoice as demonstrated in the notice attached hereto as Exhibit 1. (*Id.*) Given the volume of thousands of Insight Phone orders being processed through Windstream Express, Insight Phone's suggestion that customers' port requests are thwarted by Windstream's process simply does not hold true. Second, as to Big River's contention that such information is not typically committed to a customer's memory, Windstream is unaware of any legal authority establishing that customers must be able to recall all necessary information from memory prior to authorizing a carrier to change their service or access their CPNI.

Making the account number and passcode information available on Windstream Express would nullify the intent of Windstream's policy to use these fields to validate orders to guard against unauthorized access to customer accounts. The suggestion by Big River and Insight Phone that they essentially should be provided the answers to the test, so to speak, defeats the entire purpose of Windstream's validation process. This issue, nevertheless, is currently pending before the FCC as part of its consideration of the NANC recommendation in WC Docket No. 07-244. As set forth in the Comments of CenturyLink, Iowa Telecommunications, and Windstream attached hereto as Exhibit 2, making such information available to requesting carriers, or agents of those carriers (some of whom not telecommunication carriers and are located overseas), creates an alarming scenario whereby wholesale orders may be processed with virtually no validation or assurance that the customers have in fact authorized the orders. Moreover, such a result would be directly in conflict with the FCC's current requirements for simple ports allowing the four fields including account numbers and passcodes to be used to validate simple ports. To the extent that the issue is being considered by the FCC, the Kentucky Commission should not risk an inconsistent decision and should defer to the FCC's decision on the NANC recommendation.

Consistent with the FCC’s “four fields” order, requiring an account number and passcode to validate wholesale orders without also providing that information to the requesting carriers is reasonable. While telephone numbers are readily available to both customers and third parties through a variety of sources, account numbers and passcodes are more likely to be available only to customers. As such, account numbers and passcodes offer greater protection against an unauthorized third-party accessing a customer’s account information. The fact that Insight Phone and Big River merely assert without that these consumer protection practices present an inconvenience for their operations does not justify them being provided with the applicable fields of information in order to circumvent the validation process.

3. Windstream already provides Insight with customer freeze information.

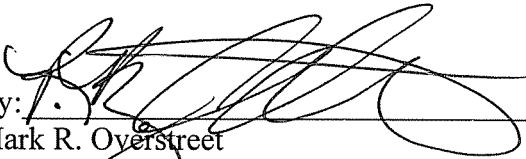
The issue in this proceeding is whether Windstream is required to provide Insight Phone with customer freeze information. Although it reserves the right to address this issue further in reply briefs, Windstream believes that this issue is moot as Windstream Express already provides Insight Phone and other requesting carriers with customer freeze information on a customer’s account. (Stipulate Facts ¶6.)

IV. CONCLUSION

Windstream’s validation process is supported by the FCC’s “four fields” order and FCC regulations and results in no unreasonable delay or obstruction to the porting process. Consistent with federal requirements which are based on sound public policy, Windstream’s process helps ensure that requesting carriers have obtained the necessary authorizations from customers prior to the time that the carriers submit orders on Windstream Express to change the customers’ service or to access their CPNI. Windstream’s validation policy is particularly reasonable given the questions raised with respect to Insight Phone’s authorization practices. If a requesting carrier

is obtaining customers' verified authorization, as required by the FCC, then obtaining the account number and passcode from the customers to validate their orders is consistent with the FCC requirements and not overly burdensome. For the forgoing reasons, Insight Phone's Complaint and Big River's Intervention should be denied.

Respectfully Submitted,

By: 
Mark R. Overstreet
R. Benjamin Crittenden
STITES & HARBISON PLLC
421 West Main Street
P.O. Box 634
Frankfort, Kentucky 40602-0634
(502) 223-3477

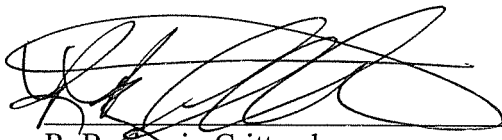
COUNSEL FOR WINDSTREAM KENTUCKY EAST,
LLC AND WINDSTREAM KENTUCKY WEST, LLC

CERTIFICATE OF SERVICE

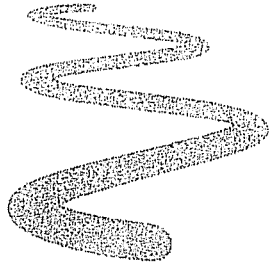
I hereby certify that a copy of the foregoing was served by United States First Class Mail, postage prepaid, and e-mail transmission on this 19th day of February, 2010 upon:

Lawrence J. Zielke
Janice M. Theriot
Zielke Law Firm, PLLC
1250 Meidinger Tower
462 South Fourth Street
Louisville, Kentucky 40202-3465

Douglas F. Brent
Stoll, Keenon & Ogden PLLC
2000 PNC Plaza
500 West Jefferson Street
Louisville, Kentucky 40202


R. Benjamin Crittenden

**Windstream is
committed to
protecting your
information.**

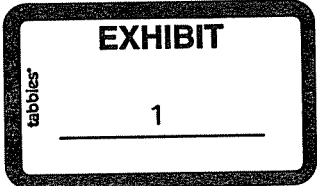


windstream.

▶ See back for details!

003793 CAPP April BI.indd 1

3/6/09 12:17:04 PM



Good news! Windstream is committed to protecting your personal information.

Windstream is committed to protecting your personal information. We use security techniques designed to protect customer information from unauthorized access. Want more information on how Windstream protects your privacy? Check out our privacy statement at windstream.com/privacy.

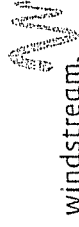
As part of this ongoing commitment, we're also launching a new Customer Account Protection Plan (CAPP) to provide increased security to you!

Your nine-digit CAPP passcode is your personal code and it's **only** printed on the first page of this bill. Keep it handy for future reference.

What are the benefits of CAPP?

- **Control.** Because your passcode will be required for any account access or service changes requested by a third party on your behalf, **you control** these activities on your account.
- **It's simple.** Your CAPP passcode is the same passcode you use to register for online billing.
- **It's completely FREE!**
- **And the best part? We'll take care of it—absolutely no action is required on your part other than to retain your passcode.**

Need to make changes to your account or retrieve your passcode? Call the number listed on your bill and we'll assist you.





ATTN: SUPPORT SERVICES
1720 GALLERIA BLVD
CHARLOTTE, NC 28270
ADDRESS SERVICE REQUESTED

Page 1 of 4
Mail Date: APRIL 21, 2009
Billing Number: [REDACTED]
Account Number: [REDACTED]

*Thank you for selecting
Windstream
as your communications
partner!*

[REDACTED] 012690 01 AV 0.324 0043

LEXINGTON KY 40509-1008

For local billing inquiries
please call
1-800-347-1991

WINDSTREAM SERVICE AT-A-GLANCE

Previous Bill	\$	38.17
Payments/Adjustments thru 04/16	\$	38.17 CR
Amount-Previously-Due	\$	00

MONDAY THROUGH FRIDAY 7:00 A.M. TO 7:00 P.M. (EST)
SATURDAY 8:30 A.M. TO 5:00 P.M. (EST)
See page 3 for your service providers.

SUMMARY OF CURRENT CHARGES

*If you are paying for
multiple Windstream
accounts with one
check, please include
the remittance slip for
each account and note
the account numbers
on the memo line
of your check.
Thank you.*



LOCAL \$ 38.25



Windstream provides online billing at
www.windstream.com and a
Customer Account Protection Plan (CAPP).
Your PIN is: [REDACTED]

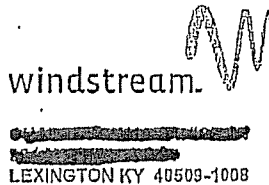
CURRENT CHARGES DUE MAY 11, 2009 \$ 38.25

TOTAL AMOUNT DUE \$ 38.25



**KEEP
SEND**

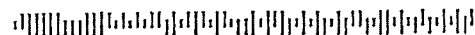
Please detach here and return with remittance
(Make checks payable to: WINDSTREAM KENTUCKY EAST, LLC)



Account Number [REDACTED]
Billing Number [REDACTED]
Mailed Date APRIL 21, 2009
Total Amount Due 38.25
Due Date MAY 11, 2009
Amount Paid \$ [] [] . [] []

219 859-266-3294 012573 222 160679491 6 16

Check here for address change or comments.
Please write on reverse side.



Windstream
P O BOX 9001908
LOUISVILLE, KY 40290-1908

700022200000016067949130904160000000382573

GENERAL INFORMATION

Payments that you have made but do not appear on this bill as a credit should be deducted from the "Total Amount Due" before you make the payment. The remittance slip should always accompany your payment. When paying in person, please bring your remittance slip. The "Amount Due" date on this bill refers to the current month's charges and does not extend any previous billing due dates or payment arrangements. An explanation of the various charges, rate schedules, and instructions on how to verify the accuracy of this bill can be obtained at a local Windstream retail location or by calling Windstream Customer Service toll-free at the number on the front page of this bill. All federal, state and local taxes are computed in accordance with the appropriate tax laws.

Billing or service questions or complaints should be referred to Windstream Customer Service. Discrepancies should be reported within 20 days of the date of the bill to allow necessary adjustments to be made before the next bill cycle. If a portion of your bill is incorrect or disputed, that amount only may be deducted from your payment. All other charges must be paid to avoid interruption of your service. Please call Windstream Customer Service toll-free to report the error.

If your amount due is less than \$2.01, you may not receive a billing statement.

A "Late Payment Charge" may apply to each customer bill when the previous month's bill has not been paid in full, leaving an unpaid balance carried forward. The charge is applied to the total amount carried forward and is included in the amount due on the current bill. Service and equipment are billed one month in advance. Windstream will not prorate charges or provide credit for any partial periods if you change, add or terminate your service on a date prior to the last day of your billing cycle. This only applies to Windstream services and may not apply to services provided by other parties. The minimum service period is 30 days. "CR" next to a charge, denotes a credit. If "CR" appears next to the "Total Amount Due", do not pay.

eCheck authorization: 40509 By entering this 5-digit code when paying by phone, I hereby authorize Windstream and the financial institution designated by me to charge the account I have specified for payment of my Windstream services. I understand that a fee will be charged to my Windstream account for each request returned unpaid. If two requests are returned unpaid, I will be excluded from this option. In addition, I understand that Windstream and the financial institution reserve the right to terminate this payment option. This authorization can be revoked by notifying Windstream at the customer service number listed on my bill prior to 4:00 P.M. CST on my specified payment date.

EXPLANATION OF CALL CODES

- Long Distance Class of Call
- P = Person to Person
- S = Station to Station
- Long Distance Rate Periods
- D = Day
- E = Evening
- N = Night
- DM = Day Multirate
- EM = Evening Multirate
- NM = Night Multirate
- IC = International Call Rate Period

TAXES, SURCHARGES AND FEES

9-1-1 Service: This fee recovers Windstream's costs associated with construction, maintenance and upgrades of 911 services and related facilities. This fee also recovers the costs of local government providing 911 services in states that have enacted a 911 surcharge, in which case the amount of the fee is set in accordance with state law.

Access Charge per FCC Order/CLEC Network Access: This charge, also known as the Federal Subscriber Line Charge (SLC), is an FCC regulated fee that enables local telephone companies to recover a portion of the costs of connecting customers' homes or businesses to the telephone network, so those customers may receive and/or initiate interstate calls.

Federal Tax: A federal excise tax paid to the Federal Government, which is applied to all wireline customers.

State Tax: A state tax levied on all wireline customers. The tax usually applies only to local monthly service charges and usually takes the form of a sales tax. The application of this tax may vary by state.

County Tax: A county tax levied on all wireline customers. The tax usually applies only to local monthly service charges and usually takes the form of a sales tax. The application of this tax may vary by county.

City Tax: A city tax levied on all wireline customers. The tax usually applies only to local monthly service charges and can be a sales tax, a franchise fee tax, or both. The application of this tax may vary by city.

Intrastate Toll Tax / Equalization Surcharge: A usage-based tax levied by some individual states on long distance calls made in the state.

Gross Receipts Tax/Surcharge: This charge recovers for a tax that is imposed either on Windstream or on customers directly by various states for the provision of communications services. In the case of gross receipts surcharges, they are not government mandated charges.

Federal USF Fee: The Federal Universal Service Fund (USF) was established by the FCC to ensure that telecommunications services are affordable for customers with low incomes and customers living in rural areas where the cost of providing service is high. The fund also provides discounted telecommunication services to schools, libraries and rural healthcare providers. Through this fee, Windstream recovers the cost of its mandated contribution to the FUSF as permitted by the FCC.

State USF Fee: Some states have implemented a State Universal Service Fund (SUSF) similar to the federal USF. In those states, telecommunications companies must contribute a percentage of billed revenue to the SUSF. The states, in turn, allow telecommunications companies to recover their mandatory contribution to SUSF from their customers.

Relay Service Surcharge: The Americans with Disabilities Act requires all companies offering voice services to provide access to a Telecommunications Relay Service (TRS) and to contribute to a shared fund to support this service. This service enables an individual who is hearing or speech impaired to communicate with others through access to a Teleypewriter (TTY) and/or Telecommunications Device for the Deaf (TDD).

Local Number Portability (LNP) Fee: LNP allows customers to keep their current local telephone number when changing telephone service providers. The FCC has determined that the local telephone company may recover certain costs for providing LNP.

Interstate Service Fee: The Interstate Service Fee helps recover costs associated with providing interstate long distance including, for example, interstate and international connection charges. This fee is not a tax or charge required by the government.

Deregulated Administration Fee: The Deregulated Administration Fee recovers costs associated with the administration of providing many products and services, such as maintenance and entertainment offerings. This fee is not a tax or charge required by the government.

Keep

Keep this portion for your records.

Send

Return this portion with your payment.

W501116B 716648

Change of Address Effective Date ____ / ____ / ____



Name

Attention

New Address Apt / Suite #

City State Zip

Business Phone Home Phone

Comments _____



Mail Date: APRIL 21, 2009
 Billing Number: ~~XXXXXXXXXX~~
 Account Number: ~~XXXXXXXXXX~~

SERVICE PROVIDER(S)

Your InterLATA long distance carrier(s) are*:
 AT&T 1-800-222-0300

Your IntraLATA long distance carrier(s) are*:
 AT&T 1-800-222-0300

Your Local carrier is*:
 Windstream 1-800-347-1001

*If you have multiple telephone numbers, further information concerning long distance carrier assignments for those additional lines are on record with your local business office.

SUMMARY OF PAYMENTS AND ADJUSTMENTS

PAYMENTS	38.17 CR	
TOTAL PAYMENTS AND ADJUSTMENTS		38.17 CR

SUMMARY OF CURRENT CHARGES

REGULATED		
WINDSTREAM	31.48	
WINDSTREAM COMMUNICATIONS	.00	
TOTAL		31.48
DEREGULATED		
WINDSTREAM	0.79	
TOTAL		0.79
CURRENT CHARGES DUE 05/11/09		38.25

Nonpayment of the TOTAL of Regulated amounts shown above could result in disconnection of those services including basic local service and may be subject to collection actions.

Nonpayment of the TOTAL of Deregulated amounts shown above could result in disconnection of those services and may be subject to collection actions, but will not result in disconnection of basic local service.

If not paid on time, a late pay penalty of 2.0% will apply to any unpaid balance over \$25.00 after 05/15/09.



WINDSTREAM SUMMARY OF CURRENT CHARGES

Service from 04/15/09 to 05/15/09
 Toll charge inquiries call 1-800-347-1001

REGULATED		
SERVICES AND PRODUCTS	18.05	
911 SERVICE	2.10	
ACCESS CHARGE PER FCC ORDER	0.50	
FEDERAL TAX	.85	
STATE TAX	1.14	
SCHOOL TAX	.67	
KY GROSS RECEIPTS SURCHARGE	.45	
TRISITAP SURCHARGE	.09	
FEDERAL UNIVERSAL SERVICE FEE	.73	
KENTUCKY LIFELINE SUPPORT	.00	
TOTAL REGULATED		31.46
DEREGULATED		
PROTECTION PLUS PLAN	4.00	
STATE TAX	.09	
SCHOOL TAX	.05	
KY GROSS RECEIPTS SURCHARGE	.11	
DEREGULATED ADMINISTRATION FEE	1.55	

WINDSTREAM SUMMARY OF CURRENT CHARGES

TOTAL DEREGULATED	0.79
TOTAL WINDSTREAM CHARGES	38.25

DETAIL OF LOCAL SERVICE CHARGES

The following detail itemizes your current billing as required by your state regulatory agency. These charges are reflected on your regular monthly bill. Taxes and prorated monthly charges are not included.

Quantity	Service Description	Monthly Charges
REGULATED		
2	CALLING CARD UNRESTRICTED	.00
1	ACCESS CHARGE PER FCC ORDER	0.50
1	RESIDENTIAL LINE	10.05
1	USAGE SENSITIVE-3 WAY BLOCK	.00
DEREGULATED		
1	INSIDE WIRE MAINTENANCE	4.00

WINDSTREAM CUSTOMER MESSAGE

Important Information for Customers Paying by Check
 Windstream may convert your payments by check to an electronic Automated Clearinghouse (ACH) debit transaction. The debit transaction will appear on your bank statement, although your check will not be presented to your financial institution or returned to you. This ACH debit transaction will not enroll you in any Windstream automatic debit process and will only occur each time a check is received. Any resubmissions due to insufficient funds may also occur electronically. Please be aware that all checking transactions will remain secure, and payment by check constitutes acceptance of these terms. We value your business and appreciate you selecting Windstream as your telecommunications provider.

The nationwide switch to digital television broadcasting will be complete on June 12, 2009, but some of your local television stations may switch sooner. After the switch, analog-only television sets that receive TV programming through an antenna will need a converter box to continue to receive over-the-air TV. Watch your local stations to find out when they will turn off their analog signal and switch to digital-only broadcasting. Analog-only TVs should continue to work as before to receive low power, Class A or translator television stations. Analog-only TVs also should continue to work as before with satellite and cable services, gaming consoles, VCRs, DVD players and similar products.

Stay Connected With DISH Network

Since analog TVs receiving local channels from DISH do not require any action during this digital transition, it's the perfect opportunity to sign up for DISH Network. You'll enjoy all of your favorite channels at a great value. Call Windstream at the number listed on your bill or visit www.windstream.com for more information.

Information about the DTV transition is available from your local television stations, www.DTV.gov, or 1-888-CALL-FCC (TTY 1-888-TELL-FCC), and from www.dtv2009.gov or 1-888-DTV-2009 (TTY 1-877-530-2634) for information about subsidized coupons for digital-to-analog converter boxes.

Thank you for being a valued Windstream customer. We appreciate your business.

INFORMATION REGARDING YOUR NEW CAPP PASSCODE

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. If you have not yet signed up for online billing, the CAPP passcode is the same passcode that



Mail Date:
Billing Number:
Account Number:

APRIL 21, 2009

~~XXXXXXXXXXXX~~
~~XXXXXXXXXXXX~~

WINDSTREAM CUSTOMER MESSAGE

You use to register for online billing. Please keep this passcode for future reference.

Your nine-digit CAPP passcode is printed on the first page of your bill and will be required for any account access or service changes requested by a third party on your behalf. This helps ensure that your account information is secure and you are protected as a Windstream customer.

Please retain a copy of this bill so that you can refer to this important CAPP information. You may also call the number listed on your bill if you wish to change or retrieve your passcode at any time.

Thank you for being a valued customer. We appreciate your business.

Notice of Telecommunications Relay Service (TRS) Surcharge Decrease

Good News! Effective June 1, 2009, the TRS surcharge of \$0.09 per access line will be reduced to only \$0.04 per access line. This surcharge funds the Dual Party Relay System, which allows a deaf or hearing-impaired person to communicate with other such persons or with hearing persons via the telephone.

To help us serve you faster, please bring your entire billing statement with you when paying in person at one of our payment center locations.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Local Number Portability Porting Interval and) WC Docket No. 07-244
Validation Requirements)
)

To: The Commission

**COMMENTS OF
CENTURYLINK, IOWA TELECOMMUNICATIONS, AND WINDSTREAM**

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Eric N. Einhorn
Jennie B. Chandra
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Communications, Inc.
1101 17th Street, NW
Suite 802
Washington, DC 20036
(202) 223-7664 (phone)
(202) 223-7669 (fax)

Dated: February 16, 2010

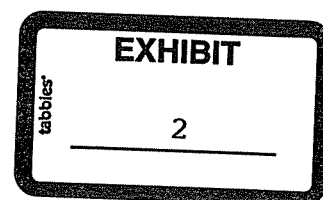


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II. THE NANC RECOMMENDATION UNDERMINES COMMISSION-APPROVED PROTECTIONS THAT ENSURE THE VALIDITY OF PORT REQUESTS 9

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ATTACHMENT A

ATTACHMENT B

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Local Number Portability Porting Interval and) WC Docket No. 07-244
Validation Requirements)
)

To: The Commission

**COMMENTS OF
CENTURYLINK, IOWA TELECOMMUNICATIONS, AND WINDSTREAM**

CenturyLink, Iowa Telecommunications Services, Inc., and Windstream Communications, Inc. (collectively, the “mid-sized ILECs”), submit the following comments in response to the Commission’s Public Notice¹ seeking comment on the North American Numbering Council’s (“NANC”) Recommended Plan for Implementation of FCC Order 09-41.² These comments address significant, substantive issues raised by CenturyLink and Windstream in the NANC process leading to the adoption of the NANC Recommendation.³

¹ *Comment Sought on Proposals for Standardized Data Fields for Simple Port Requests*, WC Docket No. 07-244, Public Notice, DA 09-2569 (rel. Dec. 8, 2009) (the “Public Notice”).

² Letter from Betty Ann Kane, Chairman, North American Numbering Council, to Sharon E. Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, WC Docket 07-244, Attach. 4 (filed Nov. 2, 2009); Letter from Betty Ann Kane, Chairman, North American Numbering Council, to Sharon E. Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, WC Docket 07-244 (filed Dec. 2, 2009) (the “NANC Recommendation”).

³ The mid-sized ILECs’ concerns were dismissed, however, by several members of the Local Number Portability – Work Group and the NANC at large. Instead of addressing our concerns in the recommendation, the NANC simply included a letter from Windstream as a “minority view” attached to the Recommendation. NANC Recommendation at Attachment 3. The letter evinces
(continued on next page)

Specifically the mid-sized ILECs' comments focus on portions of the NANC Recommendation that would (1) require a carrier to disclose customer service records without *any* validation that the customers at issue have granted permission for another carrier to access their records and (2) undermine Commission-approved safeguards that ensure the validity of port requests. While technical issues were dutifully considered, these portions of the NANC Recommendation failed to balance the need for expediency in processing legitimate port requests against the need to provide protections for sensitive customer data and the need to guard against invalid ports. The NANC Recommendation's proposals are contrary to existing law and Commission precedent that recognize the importance of protecting customer data and ensuring valid ports and, therefore, cannot be allowed to stand. At a minimum, a carrier must be able to require validation data permitted by the Commission's *Four Fields Order*⁴ (i.e., a customer's 10-digit telephone number, account number, 5-digit ZIP Code, and any pass code) before disclosing a customer service record and porting out a customer's telephone number.

To remedy deficiencies, the vast majority of the NANC Recommendation would *not* need to be altered. The Commission, instead, only would need to address portions of Sections 3.2 and 3.5.2 of the Recommendation⁵ and the porting fields proposals before the Commission.⁶ We

that the mid-sized ILECs' concerns were fully explained during the NANC process. See Attachment B.

⁴ *Telephone Number Requirements for IP-Enabled Service Providers, Local Number Portability Porting Interval and Validation Requirements, et al.*, WC Docket Nos. 07-243, 07-244, *et al.*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, 19554 ¶ 48 (2007) ("*Four Fields Order*").

⁵ NANC Recommendation at 17-18, § 3.2; *id.* at 25, § 3.5.2.

⁶ Non-Consensus Recommendation at 2, Attachment 4-B. See *generally* Alternative Proposal.

have attached this text to our comments and have recommended redlines that would help protect sensitive customer data and guard against invalid ports.⁷

I. THE NANC RECOMMENDATION CONTRADICTS EXISTING LAW AND COMMISSION PRECEDENT THAT REQUIRE CARRIERS TO PROTECT SENSITIVE CUSTOMER DATA

The NANC Recommendation overlooks the very real problem that unscrupulous carriers may attempt to use customer service records requests to fish for customer data. Customer service records generally contain customer names, addresses, telephone numbers, as well as other sensitive and personally identifiable data, such as complete information about services and features to which the customer subscribes and the identities of other carriers (like preferred interexchange carriers (“PICs”)) that provide services to the customer.⁸ But pursuant to Sections 3.2 and 3.5.2 of the NANC Recommendation, a carrier would be required to disclose customer service records without *any* validation that the customers at issue have granted permission for another carrier to access their records.⁹ The NANC Recommendation’s requirement that carriers release customer service records is unequivocal, and contains no concomitant requirement that assures that customer authorization has been provided or that requesting carriers will use data only for legitimate purposes.¹⁰ This regime lacks concrete

⁷ See Attachment A.

⁸ Under the NANC Recommendation, a customer service record must contain any and all data required to complete the fields used to validate an outbound number port. NANC Recommendation at 18, § 3.2; *id.* at 25, § 3.5.2.

⁹ NANC Recommendation at 17-18, § 3.2; *id.* at 25, § 3.5.2.

¹⁰ NANC Recommendation at 17-18, § 3.2; *id.* at 25, § 3.5.2.

safeguards to protect sensitive customer information, and therefore invites abuse by unscrupulous carriers that can use customer service record requests to fish for customer data.

This concern is not merely theoretical. On multiple occasions, commenters have received very large numbers of customer service record requests from particular carriers, very few of which were followed by actual port requests (local service requests or “LSRs”). It is highly unlikely that such a large number of customers requested that these carriers commence the porting process, and then suddenly changed their minds before the LSRs were submitted. Instead, it appears these carriers were abusing the ability to request customer service records in order to fish for customer data or for other improper purposes unrelated to preparing number ports – a practice that the NANC Recommendation will enable to occur more often and without constraint in the future.

Because customer service records contain sensitive and protected personally identifiable information, carriers must be able to deploy reasonable safeguards to protect the data. Such safeguards must include, at a minimum, the ability to require a requesting carrier to complete the four fields for a simple port (i.e., produce the customer’s 10-digit telephone number, account number, 5-digit ZIP Code, and any pass code) before a customer service record is disclosed.¹¹ Requiring completion of these four fields is a reasonable measure to validate that a requesting carrier has received a customer’s authorization to access sensitive data.

¹¹ See *Four Fields Order*, 22 FCC Rcd at 19554 ¶ 48. In most cases, carriers also should be able to require customers’ affirmative written request for disclosure of customer service records that include CPNI. See 47 U.S.C. 222(c)(2) (“A telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer.”).

The NANC Recommendation’s failure to permit this reasonable step contradicts existing law and Commission precedent that recognize the need to protect sensitive customer data. By not considering sensitivity of customer service records, the NANC Recommendation can lead to violations of section 222 of the Act, which protects consumers’ privacy interests and affords special protection to Customer Proprietary Network Information (“CPNI”) in particular.¹² As the Commission has noted, section 222(a) “imposes a general duty on telecommunications carriers to protect the confidentiality of proprietary information – a duty owed to . . . customers.”¹³ Section 222(c) and the Commission’s implementing Rules further impose explicit restrictions on disclosure of CPNI, given CPNI “includes some highly-sensitive personal information.”¹⁴ In the porting context in particular, the Commission has “reject[ed] . . . various requests for disclosure of CPNI by former carriers, *without* customer approval, to new carriers to enable the new carriers

¹² See 47 U.S.C. § 222.

¹³ See 47 U.S.C. § 222(a) (“Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, . . . customers . . .”); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115; WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 at n.6 (2007) (same) (“*2007 CPNI Order*”).

¹⁴ See 47 U.S.C. § 222(c); 47 C.F.R. Part 64 Subpart U; *2007 CPNI Order* at ¶ 5.

to initiate service.”¹⁵ Carriers, accordingly, must be allowed to enact reasonable safeguards to protect CPNI – and, indeed, the Commission’s Rules *obligate* carriers to do so.¹⁶

Such CPNI and other privacy concerns are directly implicated by the NANC Recommendation’s requirement for disclosure of customer service records. As noted above, customer service records generally contain customer names, addresses, and telephone numbers – all of which are proprietary information if the number is unlisted.¹⁷ Customer service records also generally include CPNI, such as complete information about the services and features to which the customer subscribes and the identities of other carriers providing services on the line (such as PICs).¹⁸ Thus, the provision of a customer service record as required by the NANC

¹⁵ *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended*, CC Docket Nos. 96-115 and 96-149, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409, 14454 ¶ 87 (1999) (“*CPNI Recon Order*”) (emphasis in original).

¹⁶ See 47 C.F.R. § 64.2010(a) (requiring that carriers “take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI”).

¹⁷ While directory listing information is not CPNI, the Commission nonetheless treats it as proprietary if the number is unlisted. See 47 C.F.R. § 51.217(c)(3) (excluding unlisted numbers from LECs’ directory assistance obligations); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, CC Docket No. 96-115; CC Docket No. 96-98; CC Docket No. 99-273, Third Report and Order, 14 FCC Rcd 15550, 15575 ¶ 41 (1999) (“[W]e conclude that section 222(e) does not require carriers to provide the names or addresses of subscribers with unlisted or unpublished numbers to independent publishers.”).

¹⁸ See 47 U.S.C. § 222(h) (defining CPNI as “information that relates to the . . . technical configuration [and] type . . . of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship”).

Recommendation in some cases will represent an unauthorized “disclosure” of CPNI, contrary to the protections established by Section 222 and Commission precedent.

Traditionally the Commission has been reluctant to require carriers to disclose CPNI to other carriers. The Communications Act expressly requires this disclosure only when a requesting carrier produces “affirmative written request by the customer,”¹⁹ and the Commission has been hesitant to compromise protections afforded by the statute.²⁰ Long-standing Commission precedent, which has addressed disclosure of CPNI with increasing caution,²¹ runs contrary to the NANC Recommendation – which would require frequent disclosure of CPNI, effectively in response to any and all carrier requests for the customer service record associated with a customer’s telephone number. It makes little sense for the NANC Recommendation to

¹⁹ 47 U.S.C. § 222(c)(2).

²⁰ In the porting context, the Commission requires that a carrier disclose CPNI to another carrier without a customer’s prior written approval only in very limited circumstances: (1) the disclosure requirement only pertains to ports implicated in the *provision of unbundled or resold local services*, (2) the Commission still requires a customer’s prior oral approval for disclosure, and (3) the Commission supersedes section 222(c)(2)’s written approval requirement only to the extent necessary for an ILEC to meet its section 251(c)(3) and (4) duties. *See Implementation of the Telecommunications Act of 1996; Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, 8126 ¶ 84 (1998). In that 1998 decision, the Commission apparently concluded, without explanation, that access to an ILEC’s operational support systems might necessitate disclosure of CPNI. *See id.* at ¶ 84 n.315 (citing to *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 15763-64, 15766-67 ¶¶ 518, 521-23 (1996) (subsequent history omitted)).

²¹ In its *2007 CPNI Order* imposing significant nondisclosure duties on carriers, the Commission explained that “[t]he rules we are adopting are designed to curtail *all* forms of unauthorized disclosure of CPNI” and “[u]nauthorized disclosure of CPNI by any method invades the privacy of unsuspecting consumers and increases the risk of identity theft, harassment, stalking, and other threats to personal safety.” *See 2007 CPNI Order* at ¶ 46 (emphasis in original).

allow wholesale entities (or their agents, some of which reside outside of the United States and may not be telecommunications carriers in their own right) to access customer service records without at least the same level of authentication as that required for the customers themselves.²² Indeed, the Commission has cautioned that even where CPNI may be disclosed *without* prior customer approval, “carriers must take steps to safeguard such information,”²³ given “the original carrier retains all of the obligations imposed by section 222 for such information, no matter where the CPNI . . . ultimately ‘resides.’”²⁴ It would be anomalous for the Commission here to prohibit carriers from adopting meaningful CPNI safeguards when prior customer approval is required by section 222(c) and the Rules.

To help ensure sensitive customer data are not placed at risk, the Commission need only address portions of Sections 3.2 and 3.5.2 of the NANC Recommendation.²⁵ We have attached this text to our comments and have recommended redlines accordingly.²⁶ The vast majority of the NANC Recommendation and porting fields proposals would not need to be altered.

²² Even with respect to non-call detail CPNI, a carrier is obligated to “properly authenticate” a customer requesting such information. *See* 47 C.F.R. § 64.2010(a). And in any event, a carrier’s overarching obligation to “take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI” does not distinguish between purported requests from customers and purported requests from other carriers. *See id.* In either case, there is a risk of unauthorized CPNI disclosure.

²³ *CPNI Recon Order*, 14 FCC Rcd at 14495 ¶ 167.

²⁴ *Id.* at 14495 ¶ 166.

²⁵ NANC Recommendation at 17-18, § 3.2; *id.* at 25, § 3.5.2.

²⁶ *See* Attachment A.

II. THE NANC RECOMMENDATION UNDERMINES COMMISSION-APPROVED PROTECTIONS THAT ENSURE THE VALIDITY OF PORT REQUESTS

The NANC Recommendation's requirements are also contrary to the Commission's *Four Fields Order*.²⁷ In recognition of carriers' need to guard against invalid ports, the Commission specified "four fields" – a customer's 10-digit telephone number, account number, 5-digit ZIP Code, and any pass code – that constitute the "minimum but reasonable amount of information to validate a customer request and perform a port."²⁸ The Commission here expressly acknowledged that it must ensure that the data fields used to validate port requests are sufficient to protect consumers.²⁹ In selecting the four fields, the Commission stated that the information submitted must be "sufficient to allow . . . customer verification to be established."³⁰ According to the Commission, "unless validation is performed correctly to assure that numbers being 'ported out' are in fact those for which requests have been submitted to the current provider, there is a significant risk that the incorrect customer's number may be ported, resulting in inadvertent disconnection of that subscriber."³¹

²⁷ See *Four Fields Order*, 22 FCC Rcd at 19554 ¶ 48.

²⁸ *Id.* at 19554 ¶ 42.

²⁹ *Id.* at 19557-58 ¶ 49.

³⁰ *Id.* at 19554 ¶ 43, quoting *Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 96-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697, 23711 ¶ 34 (2003).

³¹ *Local Number Portability Porting Interval and Validation Requirements, Telephone Number Portability, Embarq Petition for Waiver of Deadline*, WC Docket No. 07-244, CC Docket No. 95-116, Order, 23 FCC Rcd 2425, 2427 ¶ 7 (2008).

The NANC Recommendation, however, vitiates the protection established by the *Four Fields Order*. Under the NANC Recommendation, a customer service record must contain any and all data required to complete the fields used to validate an outbound number port.³² Thus, the NANC Recommendation effectively would give a requesting carrier “the answers to the test,” rather than require the requesting carrier to “do its homework” with end users.

The purported need offered in support of this NANC Recommendation provision was that some validation processes may cause an increase in the delay and complexity of porting for end users who want to change providers. The mid-sized ILECs’ collective experience, however, stands in stark contrast to such claims. Rather, it is our experience that such validation processes help curb attempts by parties to circumvent customer authorization processes without causing any discernable negative impact to the porting success rates of requesting carriers. In fact, it has been our experience that requesting carriers’ use of poorly trained agents – and, in the case of one particular company, agents of agents – to perform the port ordering functions is often the cause of negative impacts to their porting success rates. These facts reinforce the need for such validation procedures, particularly where agents (or agents of those agents) may not be telecommunications carriers themselves and/or may be located overseas.

Posing further problems, the NANC Recommendation and both of the porting fields proposals before the Commission would expressly prohibit the use of “carrier-initiated” passwords or personal identification numbers (“PINs”) to protect customer data in the CSR.³³

³² NANC Recommendation at 18, § 3.2; *id.* at 25, § 3.5.2.

³³ *See* NANC Recommendation at 18, § 3.2; *id.* at 25, § 3.5.2; Non-Consensus Recommendation at 2 (only allowing carriers to treat the “Personal Identifier (PID) field” as mandatory “when such password is requested and assigned by the end user”). *See generally* Alternative Proposal (failing to recognize a pass code field at all).

(And, in fact, the Alternative Proposal would not recognize any pass code field, customer-initiated or otherwise.)³⁴ Such measures unduly undercut the protections and convenience offered by carriers that automatically generate pass codes for customers, but provide those customers with notice of and ready ability to obtain or change their pass codes at any time. Neither the NANC nor the individual proponents of the porting fields proposals have explained how this restriction is consistent with the Commission's identification of pass codes as a validation field in the *Four Fields Order*, which makes no distinction between carrier-assigned and customer-assigned pass codes. To maintain consistency with the *Four Fields Order*, the Commission should take steps to ensure that no part of the NANC Recommendation unduly curtails carriers' reasonable use of pass codes for securing sensitive customer data.

The Commission need only address portions of Sections 3.2 and 3.5.2 of the Recommendation and the porting fields proposals to protect against invalid ports. Legitimacy of a port request can be confirmed by requiring requesting carriers to go to end users, rather than carriers, to collect the data needed to complete the validation fields approved by the *Four Fields Order*. To ensure this important safeguard is not undermined, Attachment A proposes redlines that modify the NANC Recommendations and porting fields proposals.

CONCLUSION

Portions of the NANC Recommendation and porting fields proposals conflict with existing law and policy that recognize the importance of protecting sensitive customer data and guarding against invalid ports. The Commission cannot impose the NANC's technical recommendation on carriers without addressing these legal and policy issues. In particular, the

³⁴ See generally Alternative Proposal.

Commission should ensure that, at a minimum, carriers can continue to require requesting carriers to produce four fields data before a customer service record is disclosed and a number is ported – a measure that provides at least some assurance that customers have authorized disclosure of their customer service records and porting of their telephone numbers.

Respectfully submitted,

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February 16, 2010

Attachment A: Suggested Revisions to the NANC Recommendation and Porting Fields Proposals

(1) NANC Recommendation

(Attachment 1 to the NANC Letter, filed 12/02/09)

3.2. Recommended Revised NANC LNP Provisioning Flows

....

Key recommendations contained in this flow include:

The Old Local Service Provider cannot require a physical copy of the end user authorization to be provided before processing the ~~Customer Service Record (CSR) or the~~ port request.

The Old Service Provider shall not require the New SP to have previously obtained a CSR before they will accept an LSR from the New Service Provider. For those New Service Providers that choose not to obtain a CSR, they understand that there is heightened risk that their LSR may not be complete and accurate. This is not intended to preclude those providers who provide an ordering Graphical User Interface (GUI) from including a step involving a real-time CSR pull within that process, as long as an alternate ordering process is available that does not require a CSR being pulled.

CSRs, if requested and available, must be returned within 24 clock hours, unless otherwise negotiated between Service Providers, excluding weekends and Old Service Provider holidays.

~~Any of the End User validation fields required by the Old Service Provider on an incoming LSR must be available on the CSR, excluding End User requested and assigned password/PIN.~~

~~Only~~ *Each of the validation fields permitted by the Commission's Four Fields Order (i.e., a customer's 10-digit telephone number, account number, 5-digit zip code, and, if applicable, Passwords/PINs requested and assigned by either the End User or the Service Provider) may be utilized as an End User validation field on an incoming CSR or LSR by the Old Network Service Provider/Old Local Service Provider. Any Service Provider assigned password/PIN may not be utilized as a requirement in order to obtain a CSR.*

....

3.5.2. Recommended Customer Service Record (CSR) Requirements

....

- The Old Local Service Provider cannot require a physical copy of the end user authorization to be provided before processing the ~~Customer Service Record (CSR) or the~~ port request.

- The Old Service Provider shall not require the New SP to have previously obtained a CSR before they will accept an LSR from the New Service Provider. For those New Service Providers that choose not to obtain a CSR, they understand that there is heightened risk that their LSR may not be complete and accurate. This is not intended to preclude those providers who provide an ordering Graphical User Interface (GUI) from including a step involving a real-time CSR pull within that process, as long as an alternate ordering process is available that does not require a CSR being pulled.
- CSRs, if requested and available, must be returned within 24 clock hours, unless otherwise negotiated between Service Providers, excluding weekends and Old Service Provider holidays.
- ~~Any of the End User validation fields required by the Old Service Provider on an incoming LSR must be available on the CSR, excluding End User requested and assigned password/PIN.~~
- ~~Only~~ *Each of the validation fields permitted by the Commission's Four Fields Order (i.e., a customer's 10- digit telephone number, account number, 5-digit zip code, and, if applicable, Passwords/PINs requested and assigned by either the End User or the Service Provider) may be utilized as an End User validation field on an incoming CSR or LSR by the Old Network Service Provider/Old Local Service Provider. Any Service Provider assigned password/PIN may not be utilized as a requirement in order to obtain a CSR.*

....

(2) NANC Non-Consensus Recommendation

(Attachment 4 to the NANC Letter, filed 12/02/09)

3.5.1 Standard Local Service Request (LSR) Data Fields

....

Fields identified in the LSOG as "Optional" may be utilized by the New Service Provider to provide additional information relative to a port; ~~however, they may not be "Required" under any circumstances (excluding the Personal Identifier (PID) field, which may be required for end user validation purposes based on FCC 07-188, only when such password is requested and assigned by the end user) and will not be edited for other than the appropriate data characteristics (e.g. 10 character alphanumeric, 5 character numeric, 17 character alphabetical) and any field specific Valid Values.~~

....

Attachment 4-B

The NANC Non-Consensus Recommendation matrix should be modified as follows:

- *A new row should be added for “Pass Code” (regardless of whether the pass code is assigned by the Service Provider or end user).*
- *The cell that defines the Standard Data Set for the Pass Code should be populated with an “O” (to clarify that this field is Optional for the Old Service Provider, but required for a New Service Provider if the Old Service Provider opts to use it).*
- *The cell that defines the Application Form for the Pass Code should be populated with “LSR Form.”*
- *The final cell for the Pass Code should be populated with “V” (to indicate that the data are used to help ensure the request is Validated).*

(3) Alternative Proposal

(NCTA, Comcast, and Cox Letter, filed 11/19/09)

If revised pursuant to the Alternative Proposal, Attachment 4-B of the NANC Non-Consensus Recommendation should be further modified as proposed above.

Attachment B:

Windstream Letter to NANC (10/14/2009)

Windstream Communications, Inc
202 Graham Street
Harrison, AR 72601

Tana Henson
Staff Manager – Service Center



October 14, 2009

By Electronic Mail (BAKane@psc.dc.gov)
Honorable Betty Ann Kane
Chair, North American Numbering Council
Public Service Commission of the District of Columbia
1333 H Street, N.W., West Tower 7th Floor
Washington, DC 20005

Re: Recommended Plan for Implementation of FCC Order 09-41

Dear Chair Kane,

By order, the Federal Communications Commission ("FCC") charged this industry group with the tasks of addressing how a business day should be construed for purposes of the porting interval and generally defining a simple port. The proposed recommendation, while acceptable in most of its provisions, exceeds the FCC's instructions in several respects and includes additional provisions that conflict with existing law and/or practice and that otherwise circumvent reasonable customer protections. I participated in the Working Group and made it clear in discussions at that level that Windstream does not support the specific aspects of the recommendation that I describe below. We have contacted the Chair of the Working Group regarding our concerns about the portions of the recommendation discussed in this letter and also are requesting that a copy of this letter be included in the recommendation provided to the FCC on these matters. As I will address, the Council should not endorse or adopt the recommendation in its entirety as proposed by the LNP Working Group and must make several changes to several portions of the recommendation to ensure that the recommendation is consistent with law and sound public policy.

First, under Section 3.2, the recommendation includes a provision that the old local service provider cannot require a physical copy of the end user's authorization to be provided before processing a customer service record. This part of the recommendation directly contradicts Section 222 of the Act. Section 222 and the Commission's rules expressly prohibit the disclosure of CPNI except in limited circumstances. Of course, consumers may request the disclosure of such information, but Section 222(c)(2) expressly requires **an "affirmative written request"** by the customer." Although Section 64.1120(a)(2) of the Commission's rules provides that actual submission of the customer's authorization is not required prior to a port request, there is no similar provision in the law for access to CPNI itself. It has been Windstream's experience that some requesting providers attempt to avoid obtaining verified authorization from end users until the time that service is installed and well after the time that

they have submitted port requests or attempted to access customers' CPNI through Windstream's system. Specifically, local service providers must be allowed to enact reasonable safeguards to protect CPNI as required by law and to ensure that requesting carriers have obtained the written authorization of a customer prior to accessing that customer's CPNI, as required under Section 222 of the Act. Service providers have an affirmative duty to safeguard CPNI, and Section 3.2 of the recommendation as drafted is counter to that goal.

Second, also under Section 3.2, the recommendation includes language stating that all information required to be provided by new service providers for an LSR must be made available by the old service provider on the CSR with the exception of any end user requested passcodes. This recommendation should be rejected. It is inconsistent with the FCC's rules and LNP Four Fields Ruling and also establishes bad policy that precludes reasonable validation of customer information. For example, this portion of the recommendation would have the effect of requiring an old service provider to simply give the requesting provider the customer's account number and any company-assigned passcode in order for the requesting provider to fill out an LSR. In the particular case of an account number, that term is defined by the FCC in Section 64.2003(a) separately from CPNI and does not constitute CPNI. While an old service provider is required under Section 222 of the Act to make CPNI available to a requesting service provider when the requesting provider obtaining written authorization from the end user, there is no provision in the law requiring the old service provider to make all of an end user's account information, including the account number or company-assigned passcode, available to the requesting provider without written authorization. Indeed, such a requirement is wholly inconsistent with the validation processes outlined in the FCC's Four Fields Ruling which spoke to the affirmative benefits of using account numbers and passcodes to validate LSRs. In that ruling, the FCC agreed with competitive providers that four fields of information were necessary to validate simple ports. Those four fields are account number, passcodes, telephone numbers, and zip codes, and the FCC made no distinction between company assigned or customer requested passcodes. The recommendation being proposed here, however, renders that FCC ruling and any reasonable validation process virtually meaningless by seeking to require old service providers merely to "give away the answers to the test" without requesting providers having to "do their homework" with end users.

Third, in Section 3.2, the recommendation includes language proposing that no company-assigned passcode may be used to validate either an LSR or a CSR. For the reasons I explained above, this recommendation is contrary to the validation processes proposed by the FCC in its Four Fields Order and also the customer authorization safeguards in Section 222 of the Act. While Windstream recognizes that the FCC's Four Fields Order applies on its face to fields required for validating simple ports, those fields were deemed reasonable by the FCC (and the competitive carriers that suggested them) and are reasonable fields for validating that a requesting carrier has obtained the required customer authorization for accessing CPNI.

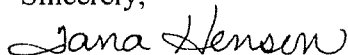
Fourth, similar language is set forth in Section 3.5.3 of the recommendation. The same language in that section should be rejected for the same reasons I have just discussed pertaining to Section 3.2.

Windstream understands that the purported need offered in support of the provisions set out above was that such validation processes caused an increase in the delay and complexity of porting for end users who want to change providers. Despite such assertions that such validation processes hinder the porting process, Windstream's data provide no support for such claims. Rather, Windstream's experience is that such validation processes help curb attempts by parties to circumvent customer authorization processes without causing any discernable negative impact to the porting success rates of requesting carriers. In fact, what has been shown to negatively impact porting success rates is a company's use of agents - and in the case of one particular company, agents of agents - to perform the port ordering functions. Windstream believes these facts reinforce the need for such validation procedures, particularly where the agents may not be telecommunications carriers themselves.

The recommendation as currently drafted includes portions in Sections 3.2 and 3.5.3 that seek to undermine legitimate and reasonable validation processes. In this respect, not all portions of the recommendation are consistent with the law or established practice as I explained. Those portions of the recommendation could enable wholesale entities (or their agents, who in many cases are outside the United States) to access accounts and CPNI without the same level of scrutiny as required for the end users themselves to access their own accounts and CPNI in the retail context. Before these portions of the recommendation are endorsed by the NANC and submitted to the FCC, they should be referred back to the Working Group for further consideration or deleted altogether.

Windstream appreciates the Council's consideration of these matters.

Sincerely,



Tana Henson

cc: Marilyn Jones (Marilyn.Jones@fcc.gov)

Deborah Blue (Deborah.Blue@fcc.gov)