

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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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)

REPLY BRIEF BY WINDSTREAM KENTUCKY EAST, LLC AND WINDSTREAM
KENTUCKY WEST, LLC TO INSIGHT'S BRIEF IN SUPPORT OF ITS FORMAL
COMPLAINT

Windstream Kentucky East, LLC ("Windstream East") and Windstream Kentucky West, LLC ("Windstream West") (collectively, "Windstream") submit the following Reply Brief in response to the brief filed in this matter by Insight Phone of Kentucky, LLC ("Insight Phone").¹

I. INTRODUCTION

Insight Phone's brief requests that the Commission order Windstream either to "stop requiring account numbers and passcodes for ports or, if it requires account numbers and passcodes, to provide them on its Windstream Express interface when a customer has authorized Insight to review the information." (Insight Phone Brief p. 1.) In a nutshell, Insight Phone is asking the Commission to order Windstream to stop using the four fields of information prescribed by the FCC to validate port requests. In the alternative, Insight Phone requests to be given the "answers to the test" and to be provided the validation fields upon its blanket representation that it has obtained the customer's authorization to access his or her information.

¹ Big River Telephone Company ("Big River"), which filed a Motion for Full Intervention on September 4, 2008, did not file a brief in this matter.

Insight Phone's requests are contrary to applicable authorities, which were absent from discussion in its brief but were addressed in detail in Windstream's initial brief. Insight Phone's requests should be denied.

II. RESPONSE TO PARTICULAR PORTIONS OF INSIGHT'S BRIEF

- A. Insight Phone's position that it cannot engage in slamming or that it may submit orders to Windstream based on some blanket letter of agency are erroneous and are not consistent with federal law or the parties' interconnection agreement which requires compliance with applicable law.

Despite the fact that Insight Phone's brief was peppered with claims that the Windstream validation processes are "unlawful" and are "contrary to state and federal law" (see, *e.g.*, page 2 of Insight Phone Brief), Insight Phone's brief significantly lacked key references to applicable law. For instance, Windstream did not note any reference to Kentucky law in support of Insight Phone's brief. More importantly, Insight Phone's brief failed to address the Federal Communications Commission's ("FCC") rules in 47 CFR §64.1100, *et. seq.* or the Congressional requirements in Section 222(c)(2) of the Act. These key federal authorities cannot be reconciled with Insight Phone's suggestions that it is incapable of slamming customers or that it may submit orders to Windstream based on some generic blanket letter of agency.

1. Insight Phone is capable of slamming.

First, as set out more fully in Windstream's initial brief, the FCC's rules recognize that a carrier like Insight Phone is in fact capable of slamming, or submitting unauthorized port requests, when it requests to change a customer's service provider without first obtaining **advance** verified customer authorization in the manner set forth in the FCC's rules. Therefore, Insight Phone is in error when it makes statements like those on page 18 of its brief that it "does not and cannot slam" for the reason that it "travels to customers' houses, knocks on their doors, confirms the order and installs hardware necessary for the port." Insight Phone misses the point

that all of these activities happen **after** Insight Phone has accessed Windstream's systems, submitted an order to change the customer's service provider, and represented to Windstream that Insight Phone already has obtained verified customer authorization.

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.)² 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 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).) Thus, Insight Phone's contention that slamming is irrelevant to its business model is beside the point and ignores the FCC's express requirements. Insight Phone is an unauthorized carrier when it submits port requests to Windstream without first having obtained the customer's verified authorization. (47 CFR §64.1120.)

Not only must Insight Phone seek advance customer authorization, but it must obtained **verified** authorization as provided by the FCC. 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

² 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 (sometimes called "Customer Service Requests" or

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...

Even assuming that Insight Phone were obtaining customer authorizations prior to the time it submits orders to Windstream,³ the facts show that Insight Phone's written authorization forms do not comply with the FCC's rules. Specifically, Insight Phone's purported individual customer authorization form called "Letter of Agency for Insight Phone 2.0 Service" does not comply with 47 C.F.R. § 64.1130(b)), which prohibits a verified customer authorization from including language other than that expressly specified as language required to fulfill the "sole purpose" of authorizing a carrier to initiate a preferred carrier change.⁴ Language in Insight Phone's customer authorization form – such as text authorizing fees for switching service and text

"CSRs") is even more stringent than the requirements set forth in §64.1120 of the FCC's rules for verifying port requests.

³ Insight Phone's brief suggests the authorization in many cases is not being obtained until the installation visit.

⁴ 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).

binding the customer to specified Insight Phone terms and conditions – falls outside of this sole purpose.⁵ Therefore, Insight Phone’s purported authorization form is invalid.

The FCC’s rules set forth a required process for making authorized requests to change a customer's service provider. Insight Phone is fully capable of violating (and the facts suggest that it is violating) the FCC's rules. The facts and the applicable federal authorities cited above support that Insight Phone is or is capable of slamming customers.⁶

2. Insight Phone may not submit customer orders based on some blanket agency letter.

Second, Insight Phone suggests that it may provide Windstream some blanket agency letter authorizing Insight Phone to act as any customer's agent. (See, *e.g.*, Insight Phone Brief pp 3-5.) For example, at page 4 of its brief, Insight Phone states that "Windstream is required to provide Insight Phone with access to a customer's CPNI based upon Insight's representation that the subscriber has authorized Insight to obtain such CPNI, provided Insight has provided Windstream with a signed blanket Letter of Agency." Further, on page 19 of its brief, Insight Phone suggests that "Windstream has no right under federal law, state law or the ICAs to verify the request or verify the authorization. Not only does Insight Phone fail to address any applicable state law, but it fails to reconcile its statements with the explicit requirements both under the FCC's authorities and Section 222 of the Act.

To the extent that Insight Phone suggests that it may submit orders to port or change a customer's service provider based upon some blanket agency form, that notion is prohibited under the FCC rules discussed above requiring Insight Phone to obtain individual verified customer authorization from each customer prior to the time that Insight Phone submits any such

⁵ See § 64.1130(e) (failing to include these items in the list of permissible authorizing language).

order to Windstream. To the extent that Insight Phone suggests that it may submit an order to Windstream to access a customer's CPNI based on some generic agency letter, that notion is prohibited under Section 222(c)(2) of the Act.⁷ As the parties' interconnection agreements require compliance with applicable law, Insight Phone's assertions are also prohibited thereunder.

Section 222(c)(2) of the Act requires a carrier like Windstream only to disclose its customers' CPNI to third parties upon affirmative written request by the customer. Insight Phone, however, confuses the terms "letters of agency" and "letters of authorization" and uses them interchangeably without recognizing the proper context. In the case where Insight Phone has chosen to allow a third-party vendor called Accenture to process orders on Insight Phone's behalf, Insight Phone is correct that it may provide Windstream a blanket letter of agency between itself and Accenture authorizing Accenture to act on Insight Phone's behalf. Insight Phone is also correct when it notes in its brief that Windstream has not contested that blanket agency letter. (Insight Phone Brief pp 3-5.) However, Insight Phone is fatally incorrect when it asserts that applicable law either allows or requires Windstream to allow Insight Phone (or its agent) to access Windstream customers' CPNI or account information based on some generic or blanket agency representation by Insight Phone regarding its relationship with Accenture.

The blanket agency letter between Insight Phone and its third-party vendor, Accenture, in no way absolves Insight Phone of its obligation to obtain customer authorizations from individual customers. For Insight Phone to access customers' CPNI, Section 222 of the Act requires individual affirmative written request by customers. For Insight Phone to submit orders

⁶ Around page 17 of its brief, Insight Phone suggests incorrectly that there have been no validated incidents of slamming with Insight Phone. This argument is not supported by the parties' stipulated facts or consistent with their discussions.

to Windstream to change a customer's service provider, the FCC's rules (§64.1120, *et. seq.*) require Insight Phone to obtain advance, verified customer authorization from every customer for whom Insight Phone submits a request.

Finally, Insight Phone (at page 19 of its brief) seems to suggest that Windstream is withholding certain CPNI based on Insight Phone's attempts to mislabel account numbers and passcodes as CPNI. Assuming Insight Phone were obtaining proper authorization to access customers' CPNI, that CPNI does not include provision of the two validation fields - account numbers or passcodes. As explained previously by Windstream, passcodes are PPI and not CPNI.⁸ Further, account numbers are not, as Insight Phone implies, CPNI simply because they appear on customer bills. If that were the case, then any data appearing on a customer's bill would be deemed CPNI. The result would be that Windstream's logo, Windstream's toll-free customer service number, and Windstream's remittance address may be deemed customer CPNI. Insight Phone's interpretation of the CPNI definition simply does not make sense.

⁷ Insight Phone's brief appears to overlook Section 222(c)(2) of the Act and addresses only (b). (Insight Phone Brief p. 9.)

⁸ Insight Phone also erroneously represents that Windstream was deceptive in its passcode communications to customers. Insight Phone fails to address that the description of the passcodes was entirely accurate or that customers also received full, color bill inserts on the issue. Further, on pages 6-7 of its brief, Insight Phone strays from the parties' stipulated facts in suggesting that customers do not know their passcodes or account numbers, a fact with which Windstream disagrees and that is not supported by the number of orders Insight Phone is validating today with account numbers and passcodes. Moreover, Insight Phone argues that the FCC has rejected passcodes and sets forth a discussion apparently under FCC authority pertaining to interexchange carriers. Insight Phone's analysis appears to be taken out of context, and Windstream notes that the FCC's four fields declaratory ruling (which calls for passcodes to be used to validate simple ports) is precisely on point.

B. Insight Phone's argument that Windstream's validation process is unlawful is without merit.

On page 17 of its Brief, Insight Phone includes a section titled, "The ICAs Require Windstream's Compliance with Federal Law and Forbids Windstream's Validation of Port Requests." Insight Phone's argument heading, like the argument itself, ignores the FCC's declaratory ruling regarding simple ports (FCC 07-188). There the FCC addressed its 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 validate simple ports and would "sufficiently protect consumers from slamming" while also helping to "decrease the validation error rate" with port requests. (*Id.* at ¶49.) The FCC's order, consequently, established four fields to be used to **validate** simple ports. Two of those fields were account numbers and passcodes. Windstream's process uses these same four fields not only to validate port requests but also to validate requests to access customer information. If carriers like Insight Phone are obtaining the validation fields from customers in order to submit port requests (consistent with the FCC's order), then providing them also to validate any customer service requests should result in no additional administrative burden.

Insight Phone, again ignoring federal authority including the FCC's declaratory ruling, states that the "goal of federal law is to foster competition and allow customers to freely move between telephone companies." (Insight Phone Brief p 8.) However, that is only one of the competing interests that the FCC sought to balance. As noted, the FCC also recognized the need to protect against unauthorized account changes, and the stringent requirements in the Act

regarding carriers' obligations to protect CPNI recognize the need for customer privacy protections. Windstream's process follows the FCC's guidance in balancing these competing interests.

At pages 9, 10, 15, and 16 of its brief, Insight Phone discusses its view of retention marketing and its belief that under "federal porting procedures, a customer does not need to contact his/her existing provider to request a number port." Windstream agrees with this statement. Windstream notes, however, that the issue of retention marketing is wholly outside the issues in Insight Phone's Complaint and the parties' stipulated facts and have no relevance to this proceeding.

Insight Phone appears to be attempting to relate the issue of retention marketing generally to this proceeding through its assertion that Windstream "has methodically been requiring more and more information for the LSR process, not because of any valid business purpose, but because it wants to create a situation where the customer must call Windstream directly thereby allowing Windstream to attempt to retain the customer." Insight Phone's suggestion is wholly without merit. The statement is without any factual support and was not an item discussed among the parties or raised, for that matter, in Insight Phone's Complaint. Had the issue of retention marketing been in discussion between the parties, Windstream would have produced facts demonstrating that its policies do not support unlawful retention marketing. More accurately, Windstream's validation process is intended to accomplish the clear business purposes established by the FCC in its declaratory ruling, and the "more and more information" that Insight Phone describes are actually the four validation fields of information set forth by the FCC.

Windstream's validation process is based on, and entirely consistent with, applicable FCC authority. To this end, Windstream also attaches as Exhibit 1 a recent *ex parte* with the FCC on the issue of the validation fields.

C. Windstream's validation processes does not result in "roadblocks."

Windstream's process use of these same four fields to validate port requests and to validate requests to access customer information is entirely consistent with the FCC's order, rules, and the Act. Because Windstream's processes comply with applicable law, they also are consistent with the parties' interconnection agreement.⁹ If Insight Phone is obtaining the validation fields from customers to submit port requests (consistent with the FCC's order), then providing the same information to validate any customer service requests should result in no additional administrative burden. Despite the rhetoric pertaining to "roadblocks" in Insight Phone's brief (see, *e.g.*, p. 9 stating that "Windstream cannot create roadblocks to competition and customer mobility"), the facts demonstrate very clearly that Windstream's validation process (as set forth by the FCC) has not created any such roadblock.

The facts offer no support for Insight Phone's contention that Windstream's validation process unreasonably creates "roadblocks" to port activity. As noted in Windstream's initial brief, 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 Phone port orders were rejected due to reasons unassociated with Windstream's validation policy. By way of comparison, Windstream notes that its records reflect that for the week of August 29, 2008, Insight Phone

⁹ Even Insight Phone's citation of the interconnection agreement includes Section 17.1 noting, "Each Party will abide by applicable...laws and regulations in obtaining End User authorization prior to changing End User's Local Service Provider..."

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 (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.*)

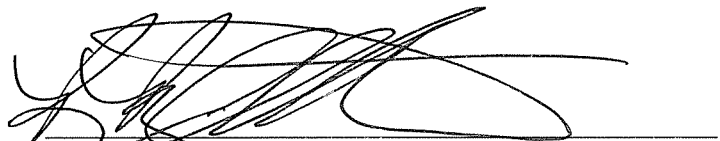
Such a negligible rejection rate hardly supports Insight Phone's contention that Windstream's validation policy creates "roadblocks" in the porting process. To the contrary, the facts that the vast majority of Insight Phone's port requests have been shown to have been processed under Windstream's validation process as well as the facts surrounding Windstream's asserted prior experiences with unauthorized account changes (see, Stipulated Facts ¶30), support the conclusion 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. CONCLUSION

The "four fields" validation process used by Windstream East and Windstream West, which is at the heart of Insight Phone's Complaint, 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. The process is supported by the FCC's declaratory ruling, applicable FCC rules, Section 222(c)(2) of the Act, and the parties' interconnection agreement. Insight Phone has failed to reconcile its positions with applicable legal authorities or otherwise to meet its burden of proof in this matter, including failing to demonstrate that Windstream's validation process has resulted in any "roadblocks" to the porting process. 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. For these reasons, Insight Phone's Complaint and Big River's intervention should be dismissed.

Respectfully submitted,



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

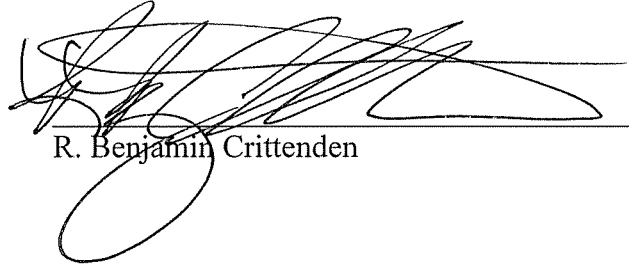
COUNSEL FOR:
WINDSTREAM KENTUCKY EAST LLC AND
WINDSTREAM KENTUCKY WEST LLC

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 12th day of March, 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

Attachment

Jennie B. Chandra
Regulatory Counsel & Director - Federal Government Affairs
Windstream Communications, Inc.
1101 17th Street, N.W., Suite 802
Washington, DC 20036
(202) 223-7667
jennie.b.chandra@windstream.com



March 11, 2010

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* in WC Docket No. 07-244,
Local Number Portability Porting Interval and Validation Requirements

Dear Ms. Dortch:

Yesterday Jeb Benedict (CenturyLink); Ed Krachmer and Dave Porter (Iowa Telecom); and Steve Weeks and I (Windstream) spoke with Ann Stevens, Michelle Sclater, Heather Hendrickson, Melissa Kinkel, and Marilyn Jones, all of the Wireline Competition Bureau, regarding the North American Numbering Council's Recommendation for implementing FCC Order 09-41.¹ Our discussion was consistent with the attached handouts and joint comments filed by CenturyLink, Iowa Telecom, and Windstream last month.²

Please feel free to contact me if you require additional information.

Sincerely,

/s/

Jennie B. Chandra

Attachments

cc: Ann Stevens Michelle Sclater Heather Hendrickson
Melissa Kinkel Marilyn Jones

¹ 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).

² Comments of CenturyLink, Iowa Telecommunications, and Windstream, WC Docket No. 07-244 (filed Feb. 16, 2010).

I. The NANC Recommendation Contradicts Existing Law and FCC Precedent Requiring Carriers to Safeguard Sensitive Customer Data.

- Section 222 of the Communications Act and the FCC’s implementing rules *obligate* carriers to enact reasonable safeguards to protect proprietary data.¹
- The NANC Recommendation undermines these protections when requiring carriers to disclose customer service records (“CSRs”) without any validation that customers at issue have granted permission for another carrier to access their records.²
 - To facilitate processing of port requests, CSRs generally contain customer names, addresses, telephone numbers,³ as well as other sensitive and personally identifiable data,⁴ such as complete information about services and features to which the customer subscribes and identities of other carriers (like PICs) providing services to the customer.⁵
 - Failure to include concrete safeguards for sensitive customer data in CSRs invites abuse by unscrupulous carriers attempting to use CSR requests to fish for sensitive customer data.⁶
 - It makes little sense for the NANC Recommendation to 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 CSRs without at least the same level of authentication as that required for the customers themselves.⁷

II. The NANC Recommendation Undermines FCC-Approved Protections That Ensure the Validity of Port Requests.

- The FCC has 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.”⁸
- The NANC Recommendation vitiates the protection established by the *Four Fields Order*.
 - Under the NANC Recommendation, a CSR must contain any data required to complete fields used to validate a number port⁹ – effectively giving a requesting carrier “the answers to the test,” rather than ask it to “do its homework” with end users.
 - The NANC Recommendation and the porting fields proposals before the FCC would expressly prohibit the use of “carrier-initiated” passwords or PINs to protect customer data in the CSR.¹⁰ This restriction is inconsistent with the *Four Fields Order*, which does not distinguish between carrier-assigned and customer-assigned pass codes.

III. To Address Deficiencies of the NANC Recommendation, The FCC Should Ensure Carriers At Least Can Require the Validation Data Permitted by the *Four Fields Order* Before Disclosing a CSR and Porting Out a Customer’s Telephone Number.

- Requiring completion of the four fields is a reasonable measure to validate that a requesting carrier has received a customer’s authorization to access sensitive data.
- 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*.

¹ As the FCC has noted, section 222(a) “imposes a general duty on telecommunications carriers to protect the confidentiality of proprietary information – a duty owed to . . . customers.” 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) (“2007 CPNI Order”). 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.” 47 U.S.C. § 222(c); 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”); *2007 CPNI Order* at ¶ 5. 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 to initiate service.” *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) (emphasis in original).

² NANC Recommendation at 17-18, § 3.2; *id.* at 25, § 3.5.2.

³ 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.”).

⁴ Under the NANC Recommendation, a CSR 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.

⁵ CPNI includes information about the services and features to which the customer subscribes and the identities of other carriers providing services on the line. 47 U.S.C. § 222(h).

⁶ This concern is not merely theoretical. Commenters have received very large numbers of CSR requests from particular carriers, very few of which were followed by actual port requests. It appears these carriers were attempting to abuse the ability to request CSRs to fish for customer data or for other improper purposes.

⁷ 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.

⁸ *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 ¶ 42. (2007). See also *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) (recognizing that “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”). The four validation fields are in addition to fields necessary to provision the new service (e.g., due date for porting out the number).

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

¹⁰ See NANC Recommendation at 18, § 3.2; *id.* at 25, § 3.5.2; Non-Consensus Recommendation at 2. The Alternative Proposal would not recognize any pass code field, customer-initiated or otherwise.

PORTING FLOW PROCESS

