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MAR 15 2010

PUBLIC SERVICE  
COMMISSION

March 12, 2010

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

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

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

Dear Mr. DeRouen:

Attached is the response brief of Insight Phone of Kentucky, LLC, in the above referenced matter.

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

Thank you for your consideration.

Respectfully,

Janice M. Theriot

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COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAR 15 2010

PUBLIC SERVICE  
COMMISSION

In the Matter of:

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

**INSIGHT'S RESPONSE TO WINDSTREAM'S BRIEF IN OPPOSITION TO  
INSIGHT'S FORMAL COMPLAINT**

Insight Phone of Kentucky, LLC (hereinafter "Insight Phone"), by counsel, hereby files this response to the Brief filed in opposition to Insight Phone's petition ("Brief or Br.") to the Public Service Commission of the Commonwealth of Kentucky (hereinafter "Commission") by Windstream Kentucky East, LLC and Windstream Kentucky West, LLC (hereinafter, collectively "Windstream").

**INTRODUCTION**

Windstream has proffered no legal or policy justification to support its so-called customer protection policy of requiring pass codes and/or account numbers before permitting Insight Phone to access customer account information through its Windstream Express interface. Instead, Windstream's efforts to verify that Insight Phone has in fact obtained authorization to access customer information and port telephone numbers are flatly prohibited by the Federal Communications Commission ("FCC") rules. Windstream's purported justifications are built on blatant misapplication of the rules. In fact, Windstream has no right at all to deny Insight access to account numbers, pass codes or any other relevant information from a customer's account once Insight obtains

customer authorization because Windstream is bound by the parties' interconnection agreements ("ICAs") to provide that information to Insight. Even if the ICAs did not specifically require Windstream to make this information available to Insight, there is no basis in the law for Windstream to withhold it, and relevant precedent demonstrates this to be the case. This Commission must not allow Windstream's behavior to continue.

In attempting to justify its anti-competitive policies, Windstream relies almost exclusively on the FCC Simple Port Order. Br. at 9 (citing *Telephone Requirements for IP-Enabled Services Providers, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking*, 22 FCC Rcd 19531 (2007) (the "Simple Port Order")). Windstream falsely asserts that this order authorizes account numbers and passcodes "on all port requests and requests to access customer CPNI." Br. at 10. This is just plain wrong. The Simple Port Order does not address in any way a carrier's access to customer records or CPNI. Access to a customer's service record is wholly distinct from the process of submitting a request to port a telephone number. The FCC rules with respect to CPNI access are clear, and all that is required is that the new carrier obtain the customer's authorization. Windstream cannot require more and it has proffered nothing to suggest that Insight Phone does not comply with this requirement.

The FCC Simple Port Order, which Windstream calls the "four fields" order, sought to ensure that consumers benefit from local number portability by addressing the maximum number of information fields that can be required when a carrier submits a request to port a telephone number, which is a separate step in the process of changing carriers. In this process, if a customer desires to port a telephone number from Windstream to Insight, Windstream as the executing carrier has only one legal obligation,

to process the port request as quickly and efficiently as possible. The FCC has determined that an executing carrier may request such information in the port request as is absolutely necessary, and no more, to ensure that the right customer account is being moved. This is called *validation*, which is what the Simple Port Order was about.

Windstream conflates port *validation*, a process designed to ensure that the correct customer information is being provided, with *verification*, a process designed to ensure that the carrier submitting a port request has received authorization from the customer. The FCC's rules could not be clearer -- Windstream has no business trying to verify that Insight Phone has obtained the customer's authorization to port his or her number. The entire premise of Windstream's argument, that pass codes and account numbers are required to "guard against unauthorized carrier changes" demonstrates that Windstream's actions are unlawful. Br. at 4, 14. The FCC has determined that whatever customer protection may be provided by the executing carrier's effort to re-verify authorization is far outweighed by the harm to competition caused by interfering with the porting process. In short, the FCC has already precluded the policy determination that Windstream seeks to assert for itself.

Windstream also misapplies applicable law by asserting that an attempt to access customer records without customer authorization constitutes slamming. Br. at 6 (incorrectly asserting that if a carrier seeks to access CPNI or submits a change request without authorization, the customer has been slammed.). This is not slamming. Slamming is defined as the unauthorized *change* in a customer's carrier. See "When Your Authorized Telephone Company Is Switched Without Your Permission – 'Slamming,'" FCC Consumer Facts, at <http://www.fcc.gov/cgb/consumerfacts/>

[slamming.html](#) (describing slamming as “the illegal practice of *switching* a consumer’s traditional **wireline** telephone company for local, local toll, or long distance service without permission”) (emphasis in original).

Windstream admits in its Brief that it has no business purpose in requiring account numbers and pass codes except to create an impermissible “test” for Insight Phone. Additionally, Windstream’s basis for its impermissible actions violate the Interconnection Agreements (“ICAs”) in effect between the Parties, and approved by the Commission, by bypassing the dispute resolution procedures which require notice and informal proceedings prior to bringing any issue before this Commission. The ICAs and the law are clear that incumbent telephone providers such as Windstream must not take it upon themselves to police the porting process which is exactly what Windstream has admitted that it is doing in Kentucky with Insight Phone. This Commission must not allow it to continue.

Windstream admits that it is creating roadblocks to ports to “test” Insight and asks this Commission to allow it to keep the answers to the test secret. Such a test not only violates the ICAs and federal law, it is also completely unnecessary because Windstream is protected by the ICAs and their dispute resolution procedures if Windstream believes Insight Phone has violated its duties. Windstream has never invoked those dispute resolution proceedings and must not be allowed to violate the ICAs by bypassing them here.

In the ICAs Insight Phone represents and covenants that it will only use the Windstream Express interface for access to customer information and ordering customer ports, pursuant to the agreement. ICA 45.3. Attachment 12 to the ICA requires Insight

Phone to be responsible for the accuracy and quality of data submitted to Windstream. ICA attachment 12 at 2.1 discussing billing data specifically. If Windstream has a problem with Insight Phone's use of Windstream Express, it need not erect impermissible roadblocks, it need merely follow the procedures in Section 9 of the ICA.

Windstream's argument that this Commission has no jurisdiction must be rejected. Windstream voluntarily consented to Commission jurisdiction under the ICAs on file with this Commission which contains a dispute resolution section that specifically allows submission to this Commission. *ICA §9.4*. Additionally, KRS 278.54611 gives the PSC jurisdiction over interconnection agreements and telecommunications carriers both of which are relevant to Insight Phone's allegations in its Formal Complaint. KRS 278.535 sets forth Kentucky's requirements for switching telecommunications providers. (In Insight Phone's Formal Complaint, 530 was cited instead of 535.)

## **ARGUMENT**

Windstream's actions are in direct violation of the terms of the parties' ICAs, which requires it provide Insight with access to all relevant customer data. Windstream relies on an erroneous reading of the FCC Simple Port order, an order that actually supports Insight Phone, in its attempt to justify erecting roadblocks to ports. Additionally, Windstream's efforts to suggest that Insight Phone is engaged in slamming should be ignored, as no evidence of slamming ever has been produced or been the subject of any dispute resolution procedure under the ICAs.

### **I. Windstream's Actions Violate the Terms of the Parties' ICAs.**

Windstream's initial brief entirely ignores the terms of the parties' ICAs, but those terms are dispositive. Under the ICAs, Windstream is required to provide access to

customer CPNI upon Insight Phone's representation that it has obtained authorization from the customer, and has no right to limit that access or to demand any further documentation. Thus, requiring proof of customer authorization to obtain access to account number and pass code information is a plain violation of the ICAs.

Insight Phone has described the terms of the ICAs concerning access to CPNI in detail in previous briefs. The key language is as follows:

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

Under this provision, Windstream has a duty to accept Insight Phone's representation that Insight has obtained authorization, so long as Insight Phone has provided Windstream with a signed blanket letter of agency. The parties agree that Insight Phone has provided the necessary letter. Consequently, Windstream is required to provide customers' CPNI upon request from Insight Phone.

If Windstream suspects that Insight Phone does not have customer authorization, the ICAs provide for specific remedies. They include requesting documentation of the customer authorization and dispute resolution under the terms of the ICAs.<sup>1</sup> Windstream has not invoked any of these remedies since the ICAs came into effect and never has complained to Insight Phone that a customer's authorization has not been obtained for access to CPNI. Moreover, the remedies do not include refusing to provide the

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<sup>1</sup> See ICA, §§ 17.4.2 (allowing a party to request a specific end user letter of agency in response to slamming complaints), 17.4.4 (subjecting disputes to dispute resolution process under section 9.0 of the agreement).

information, the form of self-help that Windstream has been engaged in since it adopted its requirement to provide account numbers and pass codes to accept a port request.

Although Windstream does not address the terms of the ICAs directly, it does make claims that could relate to the applicability of these provisions to requests for pass codes and account numbers. First, Windstream argues that they are not CPNI. Windstream Brief at 18. The fundamental problem with this argument is that the definition of CPNI includes “information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier.” 47 U.S.C. § 222(h)(1). Since Windstream places the account number and the pass code on customer bills, they plainly are CPNI.<sup>2</sup>

Second, Windstream argues that it is not required by the federal Communications Act to disclose CPNI in the absence of written customer authorization. Windstream Brief at 8-9. Windstream has, of course, waived any right it might have to demand written authorization by agreeing to the procedure in the ICAs. Moreover, the statute itself does not make written authorization the exclusive mechanism for release of CPNI; rather, it affirmatively requires the release of CPNI when written authorization is provided, without prohibiting release under other circumstances.<sup>3</sup> Consequently, Windstream’s claim that it is not obligated to provide account numbers and pass codes to Insight Phone, despite the explicit terms of the ICAs, is insupportable.

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<sup>2</sup> Of course, if they were not CPNI, then Windstream would not be able to claim that it would be unable to disclose them without customer permission.

<sup>3</sup> 47 U.S.C. § 222(c)(2). It is clear from the FCC’s rules that there is no prohibition on granting access to CPNI based on oral consent. For instance, a carrier may obtain customer consent during an inbound or outbound telemarketing call for the purposes of that call. 47 C.F.R. § 64.2008(f).



## II. Windstream's Reliance On The *Simple Port Order* to Justify Requiring Pass Codes and Account Numbers for Access to CPNI Is Misplaced.

Even if the ICAs did not address the specific question of whether Windstream can withhold account numbers and pass codes, Windstream still would be unable to do so because it is using them unlawfully to verify the customer's decision to change carriers. Windstream repeatedly points to the FCC's *Simple Port Order*<sup>4/</sup> as providing the "legal basis to conclude that Windstream may require account numbers and/or pass codes for access to CPNI . . . ." Br. at 8-10, 12. This is wrong. That order had nothing to do with accessing customer service records or protecting CPNI. The relevant provisions of that order addressed only one issue, the type of information that an executing carrier like Windstream may request from a carrier like Insight Phone when submitting a port request.<sup>5/</sup>

The rules that actually do govern access to CPNI in the context of a carrier change wholly undermine Windstream's claims. Access to the customer information contained in the customer service record ("CSR") through Windstream Express is a precursor to submitting a port request. Carriers must have access to the CSR to ensure submission of an accurate -- that is valid -- port request. Carriers like Windstream have a duty under section 251(c) of the Act to provide non-discriminatory access to the customer service record to competing providers such as Insight Phone.<sup>6/</sup> The rules regarding access to the CPNI contained in the customer service record by a competing provider seeking to win

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<sup>4/</sup> *In re Telephone Number Requirements for IP-Enabled Service Providers*, 22 FCC Rcd 19531, FCC 07-188, ¶2, (2007) ("*Four Fields Order*").

<sup>5/</sup> *Four Fields Order*, 22 FCC Rcd at ¶¶ 42-49.

<sup>6/</sup> *See, e.g.*, *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information* 13 FCC Rcd 8061, 8126, n. 315 (1998) (citing *Local Competition Order*, 11 FCC Rcd at 15763-65).

the customer are wholly different than the rules that apply when a customer calls its own carrier for access to CPNI.

In the carrier change context, all that is required before Insight Phone or its properly designated agent, Accenture, may access the information in the customer service record is the customer's oral consent. It is for this reason that Windstream's citation to section 222(c)(2) to suggest that Insight Phone must obtain written authorization from the customer before accessing the CPNI in a customer's service record is misplaced. Br. 15, n. 6. Section 222(c)(2), which requires carriers to disclose CPNI upon its own customers' written authorization, is not applicable in the context of a competing carrier seeking access to a customer service record based on the customer's consent. As stated by the FCC:

We note, however, that section 222(c)(1) does not prohibit carriers from disclosing CPNI to competing carriers, for example, upon customer "approval." Accordingly, although an incumbent carrier is not required to disclose CPNI pursuant to section 222(d)(1) or section 222(c)(2) absent an affirmative written request, local exchange carriers may need to disclose a customer's service record *upon the oral* approval of the customer to a competing carrier prior to its commencement of service as part of the LEC's obligations under sections 251(c)(3) and (c)(4).

13 FCC Rcd at 8126. (emphasis added).

Once Insight or its agent obtains oral consent from a customer to access his or her CPNI, Windstream is required to provide access to that information, contained in the CSR, on a non-discriminatory basis. As the Commission has recognized, "a carrier's failure to disclose CPNI to a competing carrier that seeks to initiate service to that customer who wishes to subscribe to a competing carrier's service, may well constitute an unreasonable practice in violation of section 201(b), depending on the circumstances."

*Id.*

Moreover, as described above, the ICAs also require Windstream to provide Insight access to customer CPNI “based on Insight’s representation that subscriber has authorized Insight to obtain such CPNI.” ICA 17.4. The ICAs do not require or permit confirmation of Insight’s representation that it has authorization. Windstream has never made any complaint that Insight has viewed CPNI without customer authorization; and if Windstream believed that this has occurred, section 17.4.4 of the ICAs requires that Windstream follow the dispute resolution procedure set forth in the ICAs before raising any such complaint to this Commission.

Windstream has pointed to no authority whatsoever to support its imposition of pass codes and/or account codes, or to suggest the need for written authorization, before providing access to customer service records. Windstream, rather, admits throughout its Brief that it has no business purpose in requiring account numbers and pass codes before providing access to customer service records. Windstream asserts that it has adopted its porting procedures to “test” Insight Phone and states that it will not provide the “answers to the test” even when customers authorize Insight Phone to access their customer information. The fact is that Windstream is not authorized to “test” Insight Phone at all.

**III. Windstream’s Efforts to Guard Against Unauthorized Access Ports by Requiring Pass Codes and Account Numbers is Unlawful in the Absence of Making that Information Available in the CSR.**

The submission of an order to port a customer’s number is separate from the question of accessing CPNI. Just as Windstream’s efforts to impose pass codes and/or accounts codes to access CPNI is unlawful, Windstream’s requirement to provide this information in the port request is unlawful.

Windstream consistently confuses validation of porting information with verification of authorization to request a port. This confusion is captured in statements such as the following: “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.” Br. 15. This, however, is not validation. What Windstream wants to do is called re-verification. Validation is permitted; re-verification is not. The FCC rules clearly prohibit Windstream from seeking to ensure that Insight Phone has authorization from the customer before executing the port request.

Before a carrier may submit a carrier change request, it must have obtained authorization from its customers and had that authorization verified in one of several ways identified in the FCC rules. These rules, found at 47 CFR 64.1120-30, are summarized in Windstream’s Brief. Br. 12-13. Such authorization/verification may take the form of a writing, such as a letter of agency, an electronic authorization, or verbal and recorded authorization verified by a third party. Insight Phone fully complies with all such applicable rules. As stated before, Insight Phone obtains customer authorization of every port and then verifies that authorization using one of the required methods of verification, typically either verification in writing or third-party verification. The ICA states: “Subject to applicable rules, orders, and decisions, Windstream will provide Insight Phone with access to Customer Proprietary Network Information (CPNI) for Windstream End Users upon Insight Phone providing Windstream a signed **blanket Letter of Agency** (LOA) for Windstream’s Customer of record.” (Emphasis added.) Windstream has absolutely no role to play in this verification process and it cannot take

any steps to re-verify that Insight Phone has in fact obtained consent. To the contrary, as Insight Phone has pointed out continually in this proceeding: “[a]n executing carrier (Windstream) shall not verify the submission of a change in a subscriber’s selection of a provider of telecommunications service received from a submitting carrier.” 47 C.F.R. § 64.1120(a)(2).

There is a long history of attempts by incumbents to convince the FCC and other regulators that they should be allowed to “protect” their customers through verification of customer orders and other mechanisms that delay or deny carrier changes. The FCC consistently has rejected these efforts, and has adopted specific rules prohibiting these activities. The most notable of these prohibitions is Section 64.1120(a)(2) of the FCC’s rules, described above. The FCC adopted this rule because of concerns that executing carriers could use verification to impede competition, and despite claims that permitting executing carriers to require re-verification of service orders would reduce slamming. See Implementation of the Subscriber Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers, *Second Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 1508, 1564-65 (1998). In 2008, the FCC spelled out the basis for the rule as follows:

The Commission expressed concern that that executing carriers [such as Windstream] could use the verification process as a means to delay or deny carrier change requests in order to benefit themselves or their affiliates. While the Commission agreed that allowing executing carriers to re-verify carrier change requests could, under certain circumstances, help deter slamming, it ultimately concluded that the anti-competitive effects of re-verification outweighed the potential benefits.”<sup>71</sup>

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<sup>71</sup> Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Order, 23 FCC Rcd 486, ¶ 6.(2008).

In that case, the Commission precluded local carriers from rejecting port requests on the ground that the information contained in the request conflicted with information in the customer's records held by the local carrier.<sup>8/</sup> The Commission reaffirmed the clearly defined roles of the submitting carrier, like Insight Phone, and the executing carrier, like Windstream. The submitting carrier, through its independent third party verifier, is required to elicit consent, and the executing carrier's sole responsibility is "prompt execution of a change verified by a submitting carrier."<sup>9/</sup> The Commission found that the local carriers' rejection of port requests that contained information that conflicted with their own records constituted an unfair effort to "block a transaction that has already occurred between a customer and another carrier."<sup>10/</sup>

This analysis is consistent with a variety of other FCC decisions, including the decision adopting the carrier freeze rules, which prohibited carriers from imposing blanket freezes and required them to put freezes in place only at specific customer request. *See* 47 C.F.R. 64.1190(b)(2) (prohibiting freezes except in response to customer requests that meet specified requirements). Similarly, when the FCC adopted its CPNI rules following the 1996 Act, it concluded that incumbent carriers would not be permitted to use the information they obtained from carrier change requests to contact customers prior to the time of the carrier change because of the risk of anti-competitive behavior, even though there might be possible benefits to verification. Implementation of the Subscriber Change Selection Changes Provision of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, *Second Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC

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<sup>8/</sup> *Id.* ¶ 8.

<sup>9/</sup> *Id.*

<sup>10/</sup> *Id.*

Rcd 1508, 1568 (1998) (“Therefore, pursuant to Section 222(b), the executing carrier may only use such information to provide service to the submitting carrier, *i.e.*, changing the subscriber’s carrier, and may not attempt to verify that subscriber’s decision to change carriers.”).

Windstream’s self-admitted efforts to ensure that Insight Phone’s request to port a number was truly authorized by insisting on a pass code or account number is equally unavailing. The rules simply do not allow Windstream to undertake such an effort, under any guise.

#### **IV. Pass Codes and Account Numbers Are Not Required to Validate a Port**

Pass codes and account numbers are not required by the FCC’s rules, even for validation purposes. As noted, an executing carrier is permitted to seek information necessary to validate the port, that is, to determine that the correct customer account is being moved.

Windstream claims that the FCC’s *Simple Port Order* justifies its requirement that Insight Phone provide a pass code and account number to port a customer’s phone number, even without making the pass code and account number available in the customer service record. That Order, however, does exactly the opposite of what Windstream states: the FCC ruling requires providers to stop erecting roadblocks to porting by requiring more information than the minimum needed to identify a customer. The FCC was responding to concerns from competing providers that ILECs were requiring far more information -- in the form of validation fields -- than was needed. The result of some carriers requiring excessive validation information was to impermissibly burden requesting carriers, like Insight Phone, with gathering unnecessary information.

Indeed, in Paragraph 2 of the order, the FCC explains that a carrier may not require fields that have no business purpose:

Specifically, we clarify that no entities obligated to provide Local Number Portability may obstruct or delay the porting process by demanding from the porting-in entity information in excess of the minimum information needed to validate the customer's request. Simple Port Order at ¶2.

The FCC order identified a maximum of four fields that may be necessary to validate a port, but it in no way required all four fields. Windstream's erroneous interpretation is that it may use all four fields, but Windstream ignores the sentence before that which limits it to "the minimum information needed to validate the customer's request." *Id.* Windstream must, of course, have enough information to validate the customer's identification, but its past practice of porting without account numbers and pass codes illustrate that it does not need those fields to validate a customer.

Moreover, while identifying these fields, the FCC directed the North American Numbering Council (NANC) to develop industry guidelines implementing the order.. The NANC recently proposed its recommendations. In two significant respects, the NANC recommendation, reflecting an industry consensus, rejected the arguments that Windstream makes here. First, the NANC recommendation would preclude carriers from requiring carrier-assigned pass codes such as those that Windstream uses in Kentucky. The recommendations emphatically state that pass codes such as Windstream's that are assigned by it without a request from a customer cannot be used as a validation field to obtain information or conduct ports: "Any Service Provider assigned password/PIN may not be utilized as a requirement in order to obtain a CSR." *Recommended Plan for*



*Implementation of FCC Order 09-41*, attached as Exhibit A. (“*NANC Recommendation*”).<sup>11/</sup>

Second, the NANC recommendation would require that Windstream make available to Insight Phone all information that it uses for validation: “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.” *NANC Recommendation*, at 3.2 (page 18) and 3.5.2 (page 25), attached as Exhibit A. In other words, if Windstream is going to require account numbers and pass codes, it must make that information available to Insight Phone as part of the customer service records available through Windstream Express when Insight Phone represents that it has customer authorization to view customer information.<sup>12</sup> This is consistent with the requirements under the ICAs and the current FCC rules as well. It is also consistent with current industry guidelines established by NANC and the Ordering and Billing Forum (“OBF”), which provides that a (new) provider may access another (old) provider’s CSR, by indicating to the old provider that has oral authorization given by the end user proving consent to review their account. *See* ATIS/OBF Local Service Migration Guidelines, ATIS-0405300-0003 (2007) at 8-1 to 8-3. These policies are followed by almost all carriers in the industry, including Insight Phone.

The NANC recommendations also clarify that communication between old and new service providers must not delay the validation or processing of the port request.

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<sup>11/</sup> Windstream suggests that the Commission should wait until the FCC addresses the NANC recommendation before deciding Insight Phone’s complaint. There is no reason to wait. Windstream’s actions are impermissible today and they are impermissible under the NANC Recommendation. Whether and when the FCC may modify those recommendations in a manner more to Windstream’s liking is speculative and provides no basis for the Commission to delay deciding Insight Phone’s complaint.

<sup>12</sup> Even if the NANC recommendation is not adopted, however, Insight Phone still would be entitled to obtain access to this information under the ICAs.

*NANC Recommendation* at 3.2 (page 18). Windstream's practice of withholding account freeze information does just that. Windstream does not make available any freeze information as part of the customer information available through Windstream Express. Insight Phone's experience is that the vast majority of Windstream customers are not aware that a freeze has been placed on their account. Thus, Insight is unable to determine if a freeze has been placed on a customer's account even though the customer has authorized Insight to view their account information. Instead, to determine if an account has a freeze applied, Insight Phone must actually submit a port request and wait 24 hours to see if the port request is denied because of the account freeze. At that point, Insight Phone must then contact the customer to try to set up a three-way call with Windstream to lift the freeze and then start over. This means that this customer port takes twice as long as anyone else's.

Windstream's own customer terms and conditions show that Windstream is not motivated by any desire to protect customers. As contained on Windstream's website as of March 2, 2010, Windstream tells its customers in its Terms and Conditions that all personal identifiers, such as its pass codes, belong to Windstream, "Unless we provide you advance notice, you have no proprietary right to any such identifiers." *See* Windstream Terms and Conditions, attached as Exhibit B.

Windstream has stated that it uses the pass codes in its billing system, but it tells its customers in the Terms and Conditions that they should have no expectation of privacy regarding such information, "Information in our billing and customer care systems concerning your account and your use of Services belongs to us, and you have no expectation of privacy with respect to such information." Windstream then tells this

Commission that it must protect that information from Insight Phone even though a customer may have authorized Insight to receive that information. Clearly, the roadblocks are for Windstream's anticompetitive interests not for the customers' interests.

**V. Windstream must comply with the terms and conditions of the ICAs**

Section 17.4 of the ICAs specifically state that "Subject to applicable rules, orders, and decisions, Windstream will provide Insight with access to Customer Proprietary Network Information (CPNI) for Windstream End Users upon Insight providing Windstream a signed blanket Letter of Agency (LOA) for Windstream's Customer of record, based on Insight's representation that subscriber has authorized Insight to obtain such CPNI." In this context Insight is Windstream's customer of record. Insight Phone provided Windstream a signed blanket Letter of Agency (LOA), dated January 2, 2008, pursuant to sections 17.4 and 17.5 of the ICAs. This blanket LOA is consistent with the blanket LOA Insight Phone provides all other carriers and Windstream has never indicated that the blanket LOA provided is inadequate in any way. Neither the ICAs nor the FCC rules require that Insight obtain a customer letter of agency prior to accessing customer account information through Windstream Express. Rather, consistent with section 17.4.2 of the ICA, applicable FCC rules, and industry standards, Insight is permitted to and does obtain a customer's oral authorization to access customer CPNI with Windstream. This customer authorization is completely unrelated to a customer's authorization to port.

Indeed, it is apparent from the Windstream Brief that Windstream confuses (intentionally or not) the "signed blanket Letter of Agency (LOA)" described in ICA section 17.4 with the customer Letter of Authorization obtained to verify ports. The two

are not the same. The FCC's rules, as well as Section 222(c)(2) of the Communications Act state that a carrier shall disclose customer proprietary network information to any person designated by the customer. Thus, once Insight has obtained the customer's authorization to access the customer's CPNI, Windstream is required to provide that information to Insight. Neither the FCC rules nor the Communications Act require that Insight obtain a customer letter of authorization prior to accessing customer account information through Windstream's interface. Windstream attempts to justify erecting roadblocks by alleging that it is protecting its customers. Windstream suggests that providing access to pass codes or account codes is outside the scope of the ICA because that information does not qualify as CPNI. Rather, according to Windstream pass codes are "personally identifiable information," which should be protected more than CPNI. The authority cited for this proposition, Br. at 18, n. 9, says nothing of the sort.<sup>13/</sup> It does not even discuss PII.<sup>14/</sup> CPNI is the customer information afforded the most protection under the Telecommunications Act. 47 U.S.C. §222 and, in any event, because the account number and the pass code are listed on customer bills, they fall within the definition of CPNI. 47 U.S.C. § Section 222(h)(1) (defining CPNI to include "information contained in the bills pertaining to telephone exchange service"); 47 C.F.R.

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<sup>13/</sup> Windstream cites *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, 22, FCC Rcd 6927 ¶ 30 & n. 99. (2007). That paragraph discusses the need for carriers to disclose unauthorized access via pretexting to CPNI. That order does, however, appear to under mine the notion that personally identifiable information is not CPNI. *See id.* at n. 2 ("CPNI includes personally identifiable information derived from a customer's relationship with a provider of communications services.").

<sup>14/</sup> Windstream cites *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, 22, FCC Rcd 6927 ¶ 30 & n. 99. (2007). That paragraph discusses the need for carriers to disclose authorized access via pretexting to CPNI. That order does, however, appear to under mine the notion that personally identifiable information is not CPNI. *See id.* at n. 2 ("CPNI includes personally identifiable information derived from a customer's relationship with a provider of communications services.").

§ 64.2003(a) (defining “account information, a type of CPNI, as “information that is specifically connected to the customer’s service relationship with the carrier, including such things as an account number or any component thereof”). If Insight Phone receives customer authorization to view customer information, Windstream has no right to withhold some of that information. Windstream’s motives in withholding the customer information have nothing to do with customer protection; Windstream merely is seeking to be anti competitive in contravention of the ICAs and federal rules and regulations. This is evident when Windstream argues that customers should call Windstream to find out their pass code. This argument demonstrates that pass codes have nothing to do with security, and everything to do with maximizing Windstream’s ability to retain its current customers. This is further evident since the pass code seems to be only required to accomplish porting. Windstream readily provides customers their pass code if they call in, which would alert Windstream that the customer is planning to change carriers, since there is no other reason for the customer to request the pass code. This allows Windstream to immediately target such customers with retention efforts.

**VI. Windstream’s References To Alleged Slamming And Insight’s Authorization Practices Must Be Stricken From This Record And Cannot Justify Windstream’s Efforts To Police Ports.**

Windstream fills its Brief with unproven and unsubstantiated allegations not properly before this Commission. It creates a definition of slamming that is unsupportable, ignores the ICA dispute resolution procedure, and uses an example of a customer switching services and changing account names to allege systemic problems that are nowhere in the record.

a. **Windstream's Definition Of Slamming Ignores Industry Standards.**

In several places in its Brief, Windstream redefines “slamming” as requesting customer information without customer authorization. This definition is completely contrary to industry usage. Windstream uses their erroneous definition in order to allege that Insight Phone *may* be slamming. First, Windstream has never identified a slamming complaint or made a specific slamming allegation, other than the 2 customers that are discussed below. It merely insinuates that it *could* happen. Second, slamming has an industry accepted definition; and Insight simply is incapable of slamming under that definition.

The FCC has defined slamming as “the illegal practice of *switching* a consumer’s traditional wireline telephone company for local, local toll, or long distance service without permission.” See FCC website at: [www.fcc.gov/slamming](http://www.fcc.gov/slamming). The FCC also has stated that “Slamming occurs when a company changes a subscriber's carrier selection without that subscriber's knowledge or explicit authorization. Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, *Second Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 1508, 1509(1998). The emphasis on “switching” is in the original FCC definition. The FCC uses this definition in many documents, such as the attached FCC Consumer Facts document titled “When Your Authorized Telephone Company is Switched Without Your Permission – ‘Slamming’”. Slamming is not looking up information, it is “switching” a customer. As Insight Phone has repeatedly stated, Insight Phone is incapable of slamming because its service requires someone to

physically go to a customer's house, knock on the door, explain that the customer is switching carriers, and ask permission to do so.

Not only does Windstream have no evidence that Insight Phone has ever slammed a customer using the industry standard definition of slamming, it has absolutely no evidence that Insight Phone has ever "slammed" using Windstream's erroneous definition of slamming or in any other way. In fact, Windstream has no valid basis for making any such accusations. Insight Phone fully complies with all applicable FCC rules and does not slam customers in any way. Windstream states that because it cannot verify that two customers have authorized Insight Phone to view customer data, verification that is forbidden by the FCC's rules, then Insight Phone must have done so. This farfetched argument must be rejected. Other than these two customers, Windstream has never made any formal complaint of slamming using any definition of slamming to Insight Phone, and the facts show these customers were not slammed.<sup>15</sup> Insight Phone is not required to defend itself against insinuations; any legitimate dispute raised by Windstream must first be addressed between the Parties pursuant to the ICAs before it is aired before this Commission by filing a separate complaint against Insight Phone.

**b. The ICA Dispute Resolution Procedure Requires Notice, Documentation, Description And A Chance for Informal then Formal Resolution Before this Commission Is Involved.**

Windstream devotes much of its brief to claims that simply are not properly before this Commission at this time. These claims are subject to specific dispute resolution procedures under the ICAs that Windstream has not satisfied and, in any event, are entirely unsupported.

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<sup>15</sup> The specifics of the two cases are discussed in more detail below.

Insight Phone has lodged its Formal Complaint under Section 17 of the ICAs. This section specifically requires Windstream to use the extensive dispute resolution procedures set out in Section 9 if it does not agree that Insight properly requested CPNI for a specific End User. (ICA 17.4.4). Windstream has not notified Insight Phone of any alleged wrongdoing by Insight Phone and has not filed a complaint with this Commission against Insight Phone; thus, Insight Phone's actions are not at issue here. This Commission must concentrate its examination on the actions of Windstream.

Nevertheless, Windstream devotes a substantial portion of its brief to claims that are subject to the ICA dispute resolution process. As an example, on page 2 of its Brief, Windstream alleges that Insight Phone "may not" be obtaining verified customer authorizations before submitting port requests. As explained above, Windstream has confused what is necessary to view CPNI with what is necessary to port and Insight is obtaining everything necessary to do both; more important, Windstream never has made such a claim to Insight Phone under the terms of the ICAs. If Windstream can provide written notice, documentation and a description of wrongdoing, then it may begin the dispute resolution procedure. It may not skip that procedure and bring vague allegations to this Commission to justify its own wrong actions. Moreover, a vague allegation that Insight Phone "may not" be doing something cannot form the basis for any Commission action. Quite simply, Windstream has absolutely no proof that Insight Phone has ever looked at customer information without customer authorization or ever ported a customer without authorization and verification.

On page 4 of its Brief Windstream makes several unfounded allegations against Insight's agent, Accenture, stating that its roadblocks to ports are necessary because



Insight Phone uses Accenture as an ordering agent and Windstream has no interconnection agreement with Accenture. Accenture has been Insight Phone's ordering agent since 1996 and has been disclosed as such to Windstream and to all other carriers with which Insight interconnects. Again, under the ICAs, if Windstream has a concern with any issue related to the ICA, including an issue with Insight Phone's ordering agent, Accenture, it must first notify Insight Phone in writing, document its problems, describe them and give Insight Phone a chance to resolve the issue informally. Indeed, it is clear from the ICAs that Windstream has no basis for any complaint because section 17 of the ICAs specifically allows the use of agents and set outs a procedure wherein Insight Phone must provide a blanket Letter of Agency for that agent. Insight Phone has provided Windstream the requisite blanket LOA, which was also included as an attachment to both the Formal Complaint and the Stipulated Facts filed with this Commission. The blanket LOA makes it clear that Insight Phone's ordering vendor, Accenture, acts on Insight Phone's behalf and Insight Phone remains subject to all privacy and CPNI laws and regulations. Moreover, Accenture is a well known ordering agent in the industry and engages with similar transactions with most carriers in the industry. Windstream's alleged concerns with Accenture are fabricated, because if it actually had concerns it would have brought them up before now.

Windstream also alleges that the customer letter of agency used by Insight Phone does not comply with federal regulations and thus violates section 17 of the ICA. Again, if Windstream so believes, it must notify Insight in the manner set forth in the ICAs prior to raising it before this Commission. The form in question, exhibit 4 to the Stipulated Facts, however, does comport with FCC regulations. Windstream's accusation is based

on text which informs customers that their decision to switch service providers may subject them to fees. This language actually is required by the FCC's rules. It informs customers not that Insight Phone may charge them a fee to switch, as Windstream suggests, but that Windstream may charge them a fee to switch. *See* 47 CFR 64.1130(e)(5) (requiring letters of agency to contain "clear and unambiguous language that confirms . . . [t]hat the subscriber may consult with the carrier as to whether a fee will apply to the change in the subscriber's preferred carrier"). In fact, this disclosure is particularly important when Windstream customers are switching to Insight Phone because Windstream does not prorate customer fees. If a customer switches phone service on any other day except the last day of a monthly billing cycle, Windstream will charge them a fee for switching services. Finally, of course, this particular claim has absolutely nothing to do with the question of whether Windstream must provide access to customer information; it is intended entirely as a distraction from Windstream's own violations of the ICAs and the FCC's rules.

**c. The ICAs Provide Procedures For Dealing With Customer Changes and/or Customer Complaints Which Windstream Ignores.**

Windstream has never made any formal complaint to Insight Phone regarding a customer port or alleged slamming incident except for the two incidents described in the letters attached to the Stipulated Facts as Exhibits 5 and 6. Insight Phone explained to Windstream in Exhibit 6 that the two customers were not slammed and have been adequately served.

One customer originally placed an order to port from Windstream to Insight Phone but canceled that order before the port occurred. Exhibit 6 to the Stipulated Facts. This is an action that is common enough that is contemplated in the ICAs. Section 17.3

states that when an End User changes or withdraws authorization, each Party must act in accordance with the customer's direction. Furthermore, attachment 14 to the ICAs sets forth a procedure for Insight Phone to notify Windstream in the case of a canceled port so as to minimize any service disruption. ICA, attachment 14 at 2.8. Windstream represents that the canceled order must be because the customer was confused by Insight Phone. It also could mean that the customer simply changed his or her mind. In any event, a single cancellation is no evidence of slamming.

The other customer ported from Windstream to Insight Phone in June of 2008. Exhibit 6 to the Stipulated Facts. Insight Phone provided service for two months when the customer decided to port back to Windstream on July 31, 2008. *Id.* When Insight Phone received the port request in July, it was in the name of someone else in the household, not in the name of the Insight Phone customer. *Id.* The two different names resulted in Insight Phone initially rejected the port. *Id.* Windstream must have consulted with the customer because it resubmitted the port request in the name of the customer on the Insight Phone account. The port went through once the names matched. *Id.*

As Insight Phone has stated several times, neither of these two incidents illustrate systemic problems. These are the only two incidents that Windstream has alleged; thousands of ports have gone through without any alleged customer confusion. Furthermore, neither show slamming. One customer never switched carriers. The other customer ported to Insight Phone, stayed there a while and ported back, without ever stating that she did not intend the first port. Instead of blaming Insight Phone of slamming, Windstream should think that maybe the customer simply liked Windstream's service better than Insight Phone. Obviously, this is atypical behavior.

**VII Windstream's Reliance On Statistics Is Misplaced Even One Improperly Rejected Port Violates The ICA, Federal Law And Customer Rights.**

Windstream attempts to minimize its violations of the ICAs and the FCC's rules by claiming that only a small proportion of port requests are rejected because Insight Phone does not provide account numbers or passcodes. Windstream's statistics are not verified and are entirely immaterial to the relief requested by Insight Phone. The ICAs and the FCC, through its orders and regulations, require Windstream to execute ports for each customer that requests them. Both the ICAs and the FCC require Windstream to provide information to Insight Phone when so authorized by a customer, including all information required for a port. Moreover, Section 64.1120(a)(2) of the FCC's rules prohibits Windstream from taking any action to verify whether a submitting customer has obtained authorization for a carrier change, even for one customer.

Windstream's attempts to belittle the impact of its prohibited policies also overlook, given Windstream's actions in unilaterally imposing such illegal roadblocks, Insight has had no other choice but to set up separate procedures to work around Windstream's requirements. Windstream also does not consider the unjustified additional work Insight must do to prevent a port order from being rejected due to Windstream's unwarranted policies or the additional delays caused in scheduling a customer port. Because of Windstream's policies Insight must schedule multiple customer callbacks, often requiring five or six attempts, and mail post cards to schedule a 3-way call with the customer to call Windstream to get the pass code Windstream unilaterally assigned to the customer's account. Insight also has had to schedule multiple follow-up calls with customers and Windstream to remove freezes placed on customer accounts (often without customer authorization). These obstacles have required Insight

Phone to schedule all ports from Windstream fourteen (14) days after the customer's request to change carriers, which is far longer than the port window Insight Phone experiences with all other carriers in the industry, and Insight Phone still often has to reschedule such ports. The patient cooperation of thousands of customers in working through Windstream's unjustified additional barriers to competition reflects more on the desire of such customers to switch service to Insight Phone than on the burden imposed by Windstream. Further, it does not reflect the substantial number of customers who have thrown their hands up in light of the difficulties in changing from Windstream to Insight Phone and were denied the opportunity to take advantage of the benefits of local telephone competition.<sup>16</sup>

Moreover, in attempting to minimize its violations, Windstream uses inaccurate and misinterpreted statistics, many of which are contrary to Insight Phone's records. Windstream asserts that between May and August 28, 2008, approximately 24% of Insight Phone's port orders were rejected. This period, of course, includes times both before and after Windstream began insisting on account numbers and pass codes, and, in fact, the vast majority of the rejections occurred during August, after Windstream began requiring account numbers on all ports. Insight Phone's records show that thereafter Insight Phone implemented policies to try to acquire this information before submitting the port request to Windstream. These policies enabled Insight Phone to lower the percentage of port orders rejected by Windstream to approximately 5% between October and December 2008. Again, to avoid having its port requests rejected due to Windstream's illegal policies, Insight Phone has been forced to set up separate

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<sup>16</sup> Of course, most of these customers never reach the point in the process where their port requests would be rejected, so they are not reflected in Windstream's statistics.

procedures to work with customers to meet Windstream's requirements. Insight Phone has documented many occasions when a customer interested in switching to Insight has become frustrated and stated he or she will have to call back when told to call Windstream for a pass code. Unfortunately, many of these prospective customers do not call back. Insight Phone's records show that even today approximately 5% of prospective customers are lost each month because of Windstream's policies regarding the pass code, the account number or an account freeze.

### **CONCLUSION**

Insight Phone has asked this Commission to rule on three issues that require it to examine the action of Windstream when Insight Phone either views customer information or enters a port. Windstream has admitted that, although it has no specific evidence of wrongdoing and it has no right to verify customer authorization, it has erected roadblocks to "test" Insight Phone. Based on Windstream's admission, this Commission should order Windstream to either stop requiring account numbers and pass codes for ports or, if it requires account numbers and pass codes, to provide them to Insight Phone on its Windstream Express interface when Insight Phone has customer authorization to view customer information. Even without a port order, Windstream must provide Insight Phone with customer account numbers and/or pass codes when Insight Phone represents that the customer has authorized Insight Phone to access his or her information. Finally, Windstream must provide Insight Phone with customer freeze information when Insight Phone represents that the customer has authorized Insight Phone to view customer information.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via U.S. Mail and email on this the 12th day of March 2010 upon:

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*Counsel for Insight Phone*

# Exhibit A



**NORTH AMERICAN NUMBERING  
COUNCIL (NANC)**

**LOCAL NUMBER PORTABILITY  
ADMINISTRATION WORKING  
GROUP (LNPA WG)**

**RECOMMENDED PLAN FOR  
IMPLEMENTATION OF  
FCC ORDER 09-41**

**NORTH AMERICAN NUMBERING COUNCIL (NANC)  
 LOCAL NUMBER PORTABILITY ADMINISTRATION  
 WORKING GROUP (LNPA WG) RECOMMENDED PLAN  
 FOR IMPLEMENTATION OF FCC ORDER 09-41**

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# NORTH AMERICAN NUMBERING COUNCIL (NANC) LOCAL NUMBER PORTABILITY ADMINISTRATION WORKING GROUP (LNPA WG) RECOMMENDED PLAN FOR IMPLEMENTATION OF FCC ORDER 09-41

The Local Number Portability Administration Working Group (LNPA WG) respectfully recommends that the North American Numbering Council (NANC) and the Federal Communications Commission (FCC) formally endorse and adopt the requirements identified in Section 3 of this implementation plan in their entirety.

## 1. Introduction

### 1.1. Adoption and Release of FCC Order 09-41

On May 13, 2009, the Federal Communications Commission (FCC) adopted and released the attached FCC Order 09-41, which mandates industry implementation of a one Business Day porting interval for simple ports.

  
  
FCC-09-41A1.pdf

Specifically, in paragraph 1, the Commission ruled, *“In this Report and Order (Order), we reduce the porting interval for simple wireline and simple intermodal port requests. Specifically, we require all entities subject to our local number portability (LNP) rules to complete simple wireline-to-wireline and simple intermodal port requests within one business day.”*

In footnote 1 of FCC 09-41, the Commission defined “intermodal ports” as, *“(1) wireline-to-wireless ports; (2) wireless-to-wireline ports; and (3) ports involving interconnected Voice over Internet Protocol (VoIP) service. Because interconnected VoIP service can be provided over various types of facilities, we refer to all interconnected VoIP ports as “intermodal” irrespective of the facilities at issue.”*

In paragraph 10 of FCC 09-41, the Commission further ruled the following with respect to its direction to the North American Numbering Council (NANC):

*“We leave it to the industry to work through the mechanics of this new interval. In particular, we direct the NANC to develop new LNP provisioning process flows that take into account this shortened porting interval. In developing these flows, the NANC must address how a “business day” should be construed for purposes of the porting interval, and generally how the porting time should be measured. The NANC must submit these flows to the Commission no later than 90 days after the effective date of this Order.”*

Regarding the implementation of the one-Business Day porting interval, the Commission further ruled in paragraphs 11-12 of FCC 09-41:

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*“We further conclude that nine months is sufficient time for affected entities to implement and comply with the one-business day porting interval, and therefore require all providers subject to our LNP rules to comply with the one-business day porting interval within nine months from the date that the NANC submits its revised provisioning flows to the Commission, as discussed above, except as described below with regard to small providers. We believe that nine months provides adequate time for providers to make the necessary software changes and upgrades and to accommodate changes to internal processes and policies.” (paragraph 11)*

*“However, we recognize that some providers that do not employ automated systems for handling port requests and have limited resources to upgrade their systems may have to make more significant changes or upgrades than other providers that already employ automated porting interface. To address this disparity, we allow small providers, as defined below for purposes of this Report and Order, a longer period of time for implementing the porting interval of one business day. Thus, small providers are required to implement the reduced porting interval of one business day for simple wireline and simple intermodal ports no later than 15 months from the date that the NANC submits its revised provisioning flows to the Commission. For purposes of this Order, we consider providers with fewer than 2 percent of the nation’s subscriber lines installed in the aggregate nationwide and Tier III wireless carriers.” (paragraph 12)*

Furthermore, in footnote 34 of FCC 09-41, the Commission stated:

*“In this Order, we do not address whether it is necessary for the Commission to adopt a rule codifying the wireless industry’s voluntary two and one-half hour standard for wireless-to-wireless ports. This issue remains pending before the Commission.”*

## **1.2. Key Dates Relative to FCC Order 09-41**

It is the understanding of the LNPA WG that the following key dates are relative to the implementation of FCC 09-41:

- May 13, 2009      FCC 09-41 adopted and released by FCC
- July 2, 2009      FCC 09-41 published in Federal Register
- August 3, 2009    Effective date of FCC 09-41
- October 31, 2009   NANC Implementation Plan due to FCC
- July 31, 2010      Implementation deadline for affected entities

# NORTH AMERICAN NUMBERING COUNCIL (NANC) LOCAL NUMBER PORTABILITY ADMINISTRATION WORKING GROUP (LNPA WG) RECOMMENDED PLAN FOR IMPLEMENTATION OF FCC ORDER 09-41

- January 31, 2011 Implementation deadline for small providers<sup>1</sup>

## 2. Background


### 2.1. LNPA WG Work Plan for FCC Order 09-41

Subsequent to the FCC's adoption and issuance of FCC Order 09-41, the Chair of the North American Numbering Council (NANC) joined the LNPA WG at its May 12-14, 2009 meeting to provide direction on the FCC's charge to the NANC to revise the NANC LNP Provisioning Flows in support of the shortened interval and to address the definition of a "Business Day" in the context of the shortened interval.

At the May 12-14, 2009 LNPA WG meeting, the Chair of the NANC directed the group to commence development of the necessary industry implementation plan in support of the Order and its mandated timeline. The NANC Chair also directed the LNPA WG to submit a high-level draft work plan to the NANC no later than May 19, 2009.

The LNPA WG "white-boarded" the items that participants identified as necessary for the industry to implement FCC Order 09-41. These items were then prioritized as "Higher," "Medium," and "Lower" priority items with tentative due dates to serve as a work plan guide to the industry and an indication of the relative importance of each item to be addressed.

On May 18, 2009, the LNPA WG submitted the attached Work Plan to the NANC Chair:

  
NANC LNPA WG  
IMPLEMENTATION WORK PLAN

### 2.2. Formation of LNPA WG Sub-teams

In addition to developing the Implementation Work Plan attached above at its May 12-14, 2009 meeting, the LNPA WG also formed five sub-teams to work on various aspects of the Work Plan. After selection of the Chairpersons of each sub-team, they were directed by the LNPA WG to develop the objectives of their respective sub-team, and schedule

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<sup>1</sup> The Commission defines "small providers" as those "with fewer than 2 percent of the nation's subscriber lines installed in the aggregate nationwide and Tier III wireless carriers, as defined in the *E911 Stay Order*." (cite FCC Order 09-41, paragraph 12)

# **NORTH AMERICAN NUMBERING COUNCIL (NANC) LOCAL NUMBER PORTABILITY ADMINISTRATION WORKING GROUP (LNPA WG) RECOMMENDED PLAN FOR IMPLEMENTATION OF FCC ORDER 09-41**

the necessary meetings, open to all who wished to participate, in order to meet their objectives in time for the LNPA WG to submit its required FCC Order 09-41 industry Implementation Plan.

Each of the five sub-teams was assigned items from the Work Plan attached above and was directed to identify all issues and questions related to their items and to attempt to reach consensus on the resolution for each within their sub-team. All decisions and recommendations reached in the sub-teams were to be brought to the full LNPA WG for discussion and a determination as to whether each sub-team recommendation would be included in the LNPA WG's implementation plan recommendation to NANC. In addition, if consensus could not be reached on a sub-team item, it would also be brought to the full LNPA WG for discussion and resolution. The participants of each of the sub-teams are identified in Section 5. The key decisions and recommendations of the sub-teams and the full LNPA WG are reflected in Section 3.

The work on revising the NANC LNP Provisioning Flows was done in the full LNPA Working Group and not in the sub-teams.

## **2.2.1. "Define One Business Day" Sub-team**

Chairperson: Jan Doell, Qwest

The objectives of the "Define One Business Day" Sub-team were identified as follows:

To address how a "Business Day" should be construed for purposes of the porting interval, and generally how the porting time should be measured (stop and start times of a Business Day). Also, to address the Firm Order Confirmation (FOC) interval in relation to the One Business Day.

The items in the Work Plan attached above that were assigned to the "Define One Business Day" Sub-team were as follows:

- 2H. Define one Business Day:
  - How to measure porting time
  - FOC timeframe
- 1L. Potential NPAC Change Order to support 1 Business Day interval.
  - a. Possible new timers and indicator for which timer set to use on a port.
- 3L. Recommendations for other efficiency improvements (related to FNPRM).

The "Define One Business Day" Sub-team held thirteen (13) meetings in order to meet its objectives. The dates of these meetings were as follows:

- May 19, 2009

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- May 22, 2009
- May 28, 2009
- June 4, 2009
- June 8, 2009
- June 10, 2009
- June 22, 2009
- June 29, 2009
- July 7, 2009
- July 21, 2009
- August 4, 2009
- August 10, 2009
- August 18, 2009

**2.2.2. “Define Simple Port” Sub-team**

Chairpersons: Sue Tiffany, Sprint Nextel  
Nancy Sanders, Comcast

The objectives of the “Define Simple Port” Sub-team were identified as follows:  
To determine if a recommendation for any changes to the current definition of a Simple Port will be included in the LNPA WG’s work package to be forwarded to the NANC.

The items in the Work Plan attached above that were assigned to the “Define Simple Port” Sub-team were as follows:

- 5H. Review of definition of a Simple Port and non-Simple Port for possible recommendation (Related to FNPRM).

The “Define Simple Port” Sub-team held ten (10) meetings in order to meet its objectives. The dates of these meetings were as follows:

- June 5, 2009
- June 12, 2009
- June 19, 2009
- June 26, 2009
- July 10, 2009
- July 17, 2009
- July 24, 2009
- August 7, 2009
- August 14, 2009
- August 21, 2009

# **NORTH AMERICAN NUMBERING COUNCIL (NANC) LOCAL NUMBER PORTABILITY ADMINISTRATION WORKING GROUP (LNPA WG) RECOMMENDED PLAN FOR IMPLEMENTATION OF FCC ORDER 09-41**

## **2.2.3. “Local Service Request (LSR)” Sub-team**

Chairperson: Linda Peterman, One Communications

The objectives of the “Local Service Request (LSR)” Sub-team were identified as follows:

To explore pros/cons, Service Provider and NPAC impacts relative to an LSR 1-Business Day process solution to address FCC 09-41 requirements, inclusive of development of the process to be utilized.

The items in the Work Plan attached above that were assigned to the “Local Service Request (LSR)” Sub-team were as follows:

- 1H. Exploration of pros/cons and Service Provider and NPAC impacts related to various 1 Business Day port process options. The objective for this item is to explore development of a 1 Business Day port process using an LSR solution. Work on standardization of data fields would still continue for any solution (Related to FNPRM).
- 1M. Standardization of data fields (yes or no; if yes what are the fields) (Related to FNPRM).
  - a. Administrative/Provisioning data fields
- 2M. Changes to and/or standardization of LSR (Related to FNPRM).
- 3M. Establish CSR interval (Related to FNPRM).

The “Local Service Request (LSR)” Sub-team held thirteen (13) meetings in order to meet its objectives. The dates of these meetings were as follows:

- May 22, 2009
- May 27, 2009
- June 2, 2009
- June 8, 2009
- June 10, 2009
- June 22, 2009
- June 24, 2009
- July 1, 2009
- July 8, 2009
- July 24, 2009
- August 6, 2009
- August 13, 2009
- August 31, 2009



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**2.2.4. “Out-of-the-Box” Sub-team**

Chairperson: Teresa Patton, AT&T

The objectives of the “Out-of-the-Box” Sub-team were identified as follows:

To explore options to support the new FCC Order requiring that simple ports for wireline and intermodal be completed in 1 Business Day. These options are outside of the current LSR and WICIS/Wireless processes.

The items in the Work Plan attached above that were assigned to the “Out-of-the-Box” Sub-team were as follows:

- 1H. Exploration of pros/cons and Service Provider and NPAC impacts related to various 1 Business Day port process options. The objective for this item is to explore development of a 1 Business Day port process using an Out-of-the-box (non-LSR/non-WICIS) solution. Work on standardization of data fields would still continue for any solution (Related to FNPRM).

The “Out-of-the-Box” Sub-team held nine (9) meetings in order to meet its objectives. The dates of these meetings were as follows:

- May 22, 2009
- June 2, 2009
- June 10, 2009
- June 23, 2009
- June 30, 2009
- July 7, 2009
- July 9, 2009
- July 20, 2009
- July 23, 2009

In addition, three (3) subcommittees were formed within the “Out-of-the-Box” Sub-team to discuss various alternatives in more detail. The subcommittees met as follows:

Service Bureau Solution Subcommittee:

- May 29, 2009
- June 1, 2009
- June 5, 2009
- June 12, 2009
- June 19, 2009
- June 25, 2009

NPAC Expansion Solution Subcommittee:

- June 2, 2009

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- June 4, 2009
- June 10, 2009
- June 16, 2009
- June 24, 2009
- July 6, 2009
- July 7, 2009

## LSR/WPR Mapping Solution Subcommittee:

- June 5, 2009
- June 22, 2009

The “Out-of-the-Box” Sub-team explored five (5) alternatives to the current LSR and WICIS processes for inter-carrier communication during the porting process. Those solutions were:

- Service Bureau Solution:
  - Optional vendor solution which assists carriers in data transformations.
- NPAC Expansion Solution:
  - Combines the pre-port processes with the NPAC Create/Modify processes.
  - Expands the current port request (NPAC Create/Modify) messages utilized for porting between carriers to include necessary data for pre-port validation, E911 and Directory Assistance.
- Combination of Service Bureau and NPAC Expansion Solutions:
- ENUM Solution:
  - After discussing and analyzing this idea, it was deemed not viable and was dropped from consideration
- LSR/WPR Mapping:
  - The sub-team determined that this was not a new or “out-of-the-box” solution.

After extensive consideration, the sub-team narrowed the list of potential alternative solutions down to the Service Bureau Solution and the NPAC Expansion Solution. After discussion in the full LNPA WG, it was agreed that the Service Bureau Solution is available today should two carriers agree to enter into a bilateral agreement to use a third-party vendor to communicate with each other during the porting process. It was also agreed that the NPAC Expansion Solution would not be considered at this time due to the development necessary in Service Provider operational support systems.

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## **2.2.5. “WICIS” Sub-team**

Chairperson: Deb Tucker, Verizon Wireless

The objectives of the “WICIS” Sub-team were identified as follows:

The primary goal of this sub-team is to work through the pros and cons of using the WICIS process as a solution to a one day wireline-to-wireline and intermodal porting interval. The group is tasked with determining what it would take to use WICIS vs. LSR or some other process.

The items in the Work Plan attached above that were assigned to the “WICIS” Sub-team were as follows:

- 1H. Exploration of pros/cons and Service Provider and NPAC impacts related to various 1 Business Day port process options. The objective for this item is to explore development of a 1 Business Day port process using a WICIS solution. Work on standardization of data fields would still continue for any solution (Related to FNPRM).

The “WICIS” Sub-team held four (4) meetings in order to meet its objectives. The dates of these meetings were as follows:

- May 19, 2009
- May 26, 2009
- June 2, 2009
- June 8, 2009

The benefits and strengths of using the WICIS standard format for all porting were discussed and extensively considered by the sub-team. The team concluded that due to the tremendous level of effort required for wireline providers to move away from the LSR process to the WICIS process, given the mandated timeframe, this solution was not feasible. On their June 8, 2009 conference call, the “WICIS” Sub-team participants reached consensus to disband the sub-team in order to allow participation in the other sub-teams.

## **2.2.6. LNPA WG Liaison to ATIS Ordering & Billing Forum (OBF)**

On May, 21, 2009, the LNPA WG sent a liaison to the ATIS Ordering & Billing Forum (OBF) acknowledging their ongoing work in developing a standard port request form and a standard set of data fields for both Simple and Non-Simple Ports. Through that liaison,

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the LNPA WG expressed interest in including the OBF's work in the LNPA WG implementation plan for FCC Order 09-41.

The LNPA WG requested the OBF to provide the final list of standard Local Service Request (LSR) data elements by July 15, 2009. The OBF cooperatively expedited their schedule in order to provide that list to the LNPA WG.

## **3. LNPA WG Key Decisions and Recommendations in Support of FCC Order 09-41 and of the Further Notice of Proposed Rulemaking**

The following key decisions and recommendations were developed in the full LNPA WG and the five (5) sub-teams described above. The Local Number Portability Administration Working Group (LNPA WG) respectfully recommends that the North American Numbering Council (NANC) and the Federal Communications Commission (FCC) formally endorse and adopt the requirements identified in Section 3 of this implementation plan in their entirety.

### **3.1. *Definition of a "Business Day"***

The "Define One Business Day" Sub-team and the full LNPA WG reached consensus on the following recommendations in defining a "Business Day."

- All times discussed below, unless otherwise indicated, are based on local time in the predominant Time Zone of the NPAC Region where the End User's telephone number is being ported, as shown below:
  - Northeast region – EASTERN Time Zone
  - Mid-Atlantic - EASTERN Time Zone
  - Southeast region – EASTERN Time Zone
  - Midwest - CENTRAL Time Zone
  - Southwest region – CENTRAL Time Zone
  - West Coast region– PACIFIC Time Zone
  - Western region – MOUNTAIN Time Zone
- The following definition of Mandatory Business Days and Minimum Business Hours relate to the LSR/FOC exchange process and do not establish any mandatory staffing hours of a carrier.

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Mandatory Business Days are Monday through Friday, excluding the Old Service Provider's Company-defined holidays. Minimum Business Hours are 8am to 5pm, Monday through Friday, excluding the Old Service Provider's Company-Defined holidays, in the Predominant Time Zone of the NPAC Region for the end user's telephone number.

- The LSR-to-FOC interval is included in the One Business Day.
- The cutoff time on a Business Day for receipt of an accurate and complete Local Service Request (LSR) by the Old Service Provider (Old SP) in order for a Simple Port request to be eligible for activation at 12:00am (Midnight) the next Business Day is 1pm local time in the predominant Time Zone of the NPAC Region where the End User's telephone number is being ported. Simple Port LSRs received after the 1pm cutoff will be considered to be received on the following Business Day, and the Response clock starts at 8am (local time in the predominant time zone of the NPAC Region where the number is being ported), with the Response (FOC or reject, whichever is applicable) due no later than 12:00pm (Noon).
- Simple ports will be determined based on the FCC definition of a Simple Port. The following Firm Order Confirmation (FOC) response parameters will apply for Local Service Requests (LSRs) submitted by the New Service Provider as Simple Port requests:
  1. If the New SP-requested due date is 1-2 Business Days after LSR receipt, the Firm Order Confirmation (FOC) or Reject (whichever is applicable) is due within 4 hours, provided the LSR is received by the Old SP by the 1pm Business Day cutoff time (local time in the predominant time zone of the NPAC Region where the number is being ported). See "Simple Port: LSR to FOC Interval Chart" below.
  2. If the New SP-requested due date is 3 or more Business Days after LSR receipt, the Firm Order Confirmation (FOC) or Reject (whichever is applicable) is due within 24 clock hours.

In instances where the LSR indicates the port request is Non-Simple based on the current FCC definition and rule for a Simple Port, the Old SP must return an FOC or appropriate response within 24 clock hours. However, if there is no obvious indication that the port request is Non-Simple and was requested as a Simple Port with a requested 1-2 Business Day due date, but the Old SP determined that it is a Non-Simple Port, a response is due back to the New SP

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in four (4) hours (either an FOC with an extended due date or a Reject (whichever is applicable) in accordance with the following chart.

In accordance with the consensus decision reached by the “Define One Business Day Sub-team” and the full LNPA WG, the following chart will apply to No.1 above:

**Chart 1: SIMPLE PORT - LSR to FOC INTERVAL CHART**

<b>Accurate/Complete LSR received</b>	<b>FOC or Applicable Response Due back by day/time</b>
Mon 8:00am through 8:59am	Mon 12:00pm (noon) through 12:59pm
Mon 9:00am through 9:59am	Mon 1:00pm through 1:59pm
Mon 10:00am through 10:59am	Mon 2:00pm through 2:59pm
Mon 11:00am through 11:59am	Mon 3:00pm through 3:59pm
Mon 12:00pm (noon) through 12:59pm	Mon 4:00pm through 4:59pm
Mon 1:00pm	Mon 5:00pm
Mon 1:01pm through Tues 7:59am	Tues 12:00pm (noon)
Tues 8:00am through 8:59am	Tues 12:00pm (noon) through 12:59pm
Tues 9:00am through 9:59am	Tues 1:00pm through 1:59pm
Tues 10:00am through 10:59am	Tues 2:00pm through 2:59pm
Tues 11:00am through 11:59am	Tues 3:00pm through 3:59pm
Tues 12:00pm (noon) through 12:59pm	Tues 4:00pm through 4:59pm
Tues 1:00pm	Tues 5:00pm
Tues 1:01pm through Weds 7:59am	Weds 12:00pm (noon)
Weds 8:00am through 8:59am	Weds 12:00pm (noon) through 12:59pm
Weds 9:00am through 9:59am	Weds 1:00pm through 1:59pm
Weds 10:00am through 10:59am	Weds 2:00pm through 2:59pm
Weds 11:00am through 11:59am	Weds 3:00pm through 3:59pm
Weds 12:00pm (noon) through 12:59pm	Weds 4:00pm through 4:59pm
Weds 1:00pm	Weds 5:00pm
Weds 1:01pm through Thurs 7:59am	Thurs 12:00pm (noon)
Thurs 8:00am through 8:59am	Thurs 12:00pm (noon) through 12:59pm
Thurs 9:00am through 9:59am	Thurs 1:00pm through 1:59pm
Thurs 10:00am through 10:59am	Thurs 2:00pm through 2:59pm
Thurs 11:00am through 11:59am	Thurs 3:00pm through 3:59pm
Thurs 12:00pm (noon) through 12:59pm	Thurs 4:00pm through 4:59pm
Thurs 1:00pm	Thurs 5:00pm
Thurs 1:01pm through Fri 7:59am	Fri 12:00pm (noon)
Fri 8:00am through 8:59am	Fri 12:00pm (noon) through 12:59pm
Fri 9:00am through 9:59am	Fri 1:00pm through 1:59pm
Fri 10:00am through 10:59am	Fri 2:00pm through 2:59pm

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Fri 11:00am through 11:59am	Fri 3:00pm through 3:59pm
Fri 12:00pm (noon) through 12:59pm	Fri 4:00pm through 4:59pm
Fri 1:00pm	Fri 5:00pm
Fri 1:01pm through Mon 7:59am	Mon 12:00pm (noon)
<b>(go back to top of chart)</b>	

- The New Service Provider (New SP) must have received the FOC from the Old SP before sending their New SP Subscription Version (SV) Create message to the NPAC.
- The following chart will govern the indicated intervals for LSR Received-to-FOC Return to Ready-to-Port times for a full Business Week:

**Chart 2: One Business Day: FCC09-41  
LSR Submit/FOC Receipt and Prospective Due Date/Time Chart  
for Normal Business Week (no Holidays)**

Note: This chart does not reflect what happens when an Old Service Provider Company-Defined Holiday falls on Monday through Friday. Anytime that happens, the activity that would have fallen on the holiday will happen the following Business Day.

<b>Accurate/Complete LSR received</b>	<b>FOC Due back by date/time</b> (See Footnote 1)	<b>Ready-to-Port Day/time</b> (see Footnote 2)
Mon 8:00am through 8:59am	Mon 12:00pm (noon) through 12:59pm	Tues 00:00:00
Mon 9:00am through 9:59am	Mon 1:00pm through 1:59pm	Tues 00:00:00
Mon 10:00am through 10:59am	Mon 2:00pm through 2:59pm	Tues 00:00:00
Mon 11:00am through 11:59am	Mon 3:00pm through 3:59pm	Tues 00:00:00
Mon 12:00pm (noon) through 12:59pm	Mon 4:00pm through 4:59pm	Tues 00:00:00
Mon 1:00pm	Mon 5:00pm	Tues 00:00:00
Mon 1:01pm through Tues 7:59am	Tues 12:00pm (noon)	Weds 00:00:00
Tues 8:00am through 8:59am	Tues 12:00pm (noon) through 12:59pm	Weds 00:00:00
Tues 9:00am through 9:59am	Tues 1:00pm through 1:59pm	Weds 00:00:00
Tues 10:00am through 10:59am	Tues 2:00pm through 2:59pm	Weds 00:00:00
Tues 11:00am through 11:59am	Tues 3:00pm through 3:59pm	Weds 00:00:00
Tues 12:00pm (noon) through 12:59pm	Tues 4:00pm through 4:59pm	Weds 00:00:00
Tues 1:00pm	Tues 5:00pm	Weds 00:00:00
Tues 1:01pm through Weds 7:59am	Weds 12:00pm (noon)	Thurs 00:00:00
Weds 8:00am through 8:59am	Weds 12:00pm (noon) through 12:59pm	Thurs 00:00:00
Weds 9:00am through 9:59am	Weds 1:00pm through 1:59pm	Thurs 00:00:00
Weds 10:00am through 10:59am	Weds 2:00pm through 2:59pm	Thurs 00:00:00

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Weds 11:00am through 11:59am	Weds 3:00pm through 3:59pm	Thurs 00:00:00
Weds 12:00pm (noon) through 12:59pm	Weds 4:00pm through 4:59pm	Thurs 00:00:00
Weds 1:00pm	Weds 5:00pm	Thurs 00:00:00
Weds 1:01pm through Thurs 7:59am	Thurs 12:00pm (noon)	Fri 00:00:00
Thurs 8:00am through 8:59am	Thurs 12:00pm (noon) through 12:59pm	Fri 00:00:00
Thurs 9:00am through 9:59am	Thurs 1:00pm through 1:59pm	Fri 00:00:00
Thurs 10:00am through 10:59am	Thurs 2:00pm through 2:59pm	Fri 00:00:00
Thurs 11:00am through 11:59am	Thurs 3:00pm through 3:59pm	Fri 00:00:00
Thurs 12:00pm (noon) through 12:59pm	Thurs 4:00pm through 4:59pm	Fri 00:00:00
Thurs 1:00pm	Thurs 5:00pm	Fri 00:00:00
Thurs 1:01pm through Fri 7:59am	Fri 12:00pm (noon)	Mon 00:00:00
Fri 8:00am through 8:59am	Fri 12:00pm (noon) through 12:59pm	Mon 00:00:00
Fri 9:00am through 9:59am	Fri 1:00pm through 1:59pm	Mon 00:00:00
Fri 10:00am through 10:59am	Fri 2:00pm through 2:59pm	Mon 00:00:00
Fri 11:00am through 11:59am	Fri 3:00pm through 3:59pm	Mon 00:00:00
Fri 12:00pm (noon) through 12:59pm	Fri 4:00pm through 4:59pm	Mon 00:00:00
Fri 1:00pm	Fri 5:00pm	Mon 00:00:00
Fri 1:01pm through Mon 7:59am	Mon 12:00pm (noon)	Tues 00:00:00
<b>(go back to top of chart)</b>		

[Business Week Chart 2- Footnote 1] The FOC interval is 4 business hours. However, for LSR's arriving after the 1pm cutoff time, the LSR will be considered received at 8am the next Business Day. The Old Service Provider must respond to an LSR within 4 business hours, as indicated on the Business Week Chart, with either an FOC (complete and accurate LSR received) or a reject (incomplete and/or inaccurate LSR received).

[Business Week Chart 2- Footnote 2] The port will be ready to activate on the Business Day and time indicated in this column. No provider is required to allow activation on a non-Business Day (Saturday, Sunday or Old Service Provider Company-Defined Holiday). However, a non-Business Day activation may be performed as long as **both** Service Providers agree **and** any Service Provider activating a port on a non-Business Day understands the porting out Service Provider may not have, and is not required to have, operational support available on days not defined as Business Days. In agreeing to non-Business Day activations, the Old (porting out) Service Provider may require that the LSR/FOC and the New (porting in) Service Provider NPAC Create message be due-dated for the appropriate normal Business Day seen in Ready-to-Port column, in order to ensure that the end user's service is maintained.

[Business Week Chart 2- Footnote 3] The following definition of Mandatory Business Days and Minimum Business Hours relate to the LSR/FOC exchange process and do not establish any mandatory staffing hours of a carrier. Minimum Business Hours are 8am to 5pm, Monday





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through Friday, excluding the Old Service Provider's Company-Defined holidays, in the Predominant Time Zone of the NPAC Region for the end user's telephone number.

## 3.2. *Recommended Revised NANC LNP Provisioning Flows*

Attached are the revised NANC LNP Provisioning Flows (Diagrams and accompanying Narratives) in their entirety that are recommended for adoption in support of all porting, both for Simple Ports in one Business Day and for Non-Simple Ports in the four Business Day interval:

  
NANC Flows v4.0 -  
10-16-2009.ppt

  
NANC\_OPS\_Flows\_N  
arratives v4.0 (10-16

Following is a high-level summary of the recommended changes made to the NANC LNP Provisioning Flows:

- **Figure 1 – Port Type Determination:** This is a new flow that will be used to determine the type of port at the beginning of the process, i.e., wireless-to-wireless, wireline-to-wireline or intermodal Simple or Non-Simple, if Broadband/DSL is involved, in order to point the process user to the appropriate subsequent 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.

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- 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 passwords/PINs requested and assigned by the End User may be utilized as an End User validation field on an incoming 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.
- **Figure 3 – Broadband Verification Process:** This is a new optional flow that will be used to determine if the porting End User has Broadband/DSL on their line and/or if Broadband/DSL is necessary for the New SP to provide voice service to the porting End User, for continuity of service.
- **Figure 4 – Wireline Simple Port LSR/FOC Process:** This is a new flow that will be used for wireline-to-wireline and intermodal Simple Ports where the New Service Provider-requested Due Date is either one or two Business Days beyond the LSR receipt date.

Key recommendations contained in this flow include:

- The New Service Provider (the New Local Service Provider and/or the New Network Service Provider, whichever is applicable) must make every reasonable effort to verify that the port request is in fact a Simple Port request, e.g., pulling a Customer Service Record if available, or asking the appropriate questions of the End User, etc.
- Communication between the Old Network Service Provider and the Old Local Service Provider with regard to the port must not delay the validation or processing of the port request.
- For wireline-to-wireline ports, and ports between wireline and wireless Service Providers, the following requirements apply for the interval to respond to an LSR:
  - If the New Service Provider-requested due date is 1-2 Business Days after LSR receipt, the Firm Order Confirmation (FOC) or Reject (whichever is applicable) is due within 4 hours.

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- If the New Service Provider-requested due date is 3 or more Business Days after LSR receipt, the Firm Order Confirmation (FOC) or Reject (whichever is applicable) is due within 24 clock hours, excluding weekends and Old Service Provider-defined holidays.
  - In instances where the LSR indicates the port request is Non-Simple based on the current FCC definition and rule for a Simple Port, the Old Service Provider must return a FOC or appropriate response within 24 clock hours, excluding weekends and Old Service Provider-defined holidays.
- For port requests that are submitted by the New Service Provider as a Simple Port, but are determined to be Non-Simple by the Old Service Provider, this flow also provides an option for the Old Service Provider to return an FOC with a due date applicable for a Non-Simple Port, rather than a Reject response.
- Figure 5 – Wireline Non-Simple Port LSR/FOC Process: This is a revised flow that will be used for wireline-to-wireline and intermodal Non-Simple Ports in addition to Simple Port requests where the New Service Provider-requested Due Date is three or more Business Days beyond the LSR receipt date.
- Figure 6 – Main Porting Flow: This is a revised flow that depicts a number of the process steps that are common to all port types.

Key recommendations contained in this flow include:

- For wireline Simple Ports, the cutoff time for when the Old Service Provider can place a port into conflict in the NPAC is the later of:
  - a) 9:00pm in the predominate time zone of the NPAC region where the number is being ported one Business Day before the Due Date, or
  - b) the NPAC T2 Timer has expired. The restriction window for when the New Service Provider cannot remove the port from conflict is defined as two (2) NPAC Business Hours.
- For both Simple and Non-Simple Ports, the Old Network Service Provider must deploy the 10-digit trigger in the donor switch, if technically feasible, or monitor the NPAC for activation in order to trigger the disconnect, or carriers perform a database query for every call origination.

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- Figure 7 – Subscription Version Create Flow: This is a revised flow that depicts the steps necessary for the New and Old Service Providers to create and concur with a pending port.

Key recommendations contained in this flow include:

- The NPAC/SMS expects to receive matching Subscription Version (SV) Create messages from the Old Network Service Provider (ONSP) and the New Network Service Provider (NNSP) when facilitating porting of a telephone number. However, to prevent the possibility of the ONSP unnecessarily delaying a port, two timers were developed and referred to as T1 and T2. If the ONSP does not send a matching SV create message to the NPAC, the NNSP can proceed with porting the telephone number after both timers expire. Some Service Providers choose not to send the concurring SV create, but rather allow the timers to expire.

The LNPA Working Group concludes that all Service Providers should send the matching SV create messages to the NPAC/SMS. This will facilitate expeditious porting of telephone numbers and is more efficient than merely allowing timers to expire. The increased efficiency is especially beneficial in meeting the FCC mandated 1-day interval for Simple Ports. [Note that the order in which the ONSP and NNSP create messages arrive at the NPAC/SMS is immaterial.]

- With regard to the population of the Due Time on the New SP and Old SP NPAC Create messages, current industry practices for both Mechanized SOA and Low Tech Interface (LTI) users will be maintained for Simple Ports.

The New SP should not activate a port before midnight (00:00:00) local time of the Due Date unless it has been verified with the Old SP that the port could be activated early without impacting the customer's service. Failing to verify first that the Old SP has completed all necessary steps in the port-out process, e.g., established the 10-Digit Unconditional Trigger, resolved any order fallout in systems, etc., could result in the customer's service being negatively impacted, such as inability to receive all of their calls.

- A new additional set of NPAC T1 and T2 timers is recommended for use in the shorter porting interval. The LNPA WG reached consensus that these timers should run for 3 NPAC Business Hours each. The LNPA WG also reached consensus that the NPAC Business Hours for the shorter porting interval will be defined as 7am -12am Monday through Friday,

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excluding NPAC-defined Holidays in the predominant time zone for each NPAC region.

- **Figure 8 – Reseller/Interconnected VoIP Provider/Type 1 Notification Flow:** This is a revised flow that depicts any notification steps between a Network Service Provider and their subtending Local Service Provider, e.g., a Reseller. This flow was revised to add Interconnected VoIP Providers.

Key recommendations contained in this flow include:

- The LNPA WG identifies three classes of Interconnected VoIP providers in the NANC LNP Provisioning Flows, defined as follows:

**Class 1:** A standalone interconnected VoIP provider that obtains numbering resources directly from the North American Numbering Plan Administrator (NANPA) and the Pooling Administrator (PA) and connects directly to the Public Switched Telephone Network (PSTN) (i.e., not through a PSTN Service Provider partner's end office switch). Class 1 standalone interconnected VoIP providers must follow the appropriate Wireline-Wireline/Intermodal Flows (Simple or Non-Simple, whichever is applicable) for the LNP provisioning process, serving as the New Network Service Provider (NNSP) or Old Network Service Provider (ONSP), whichever is applicable.

**Class 2:** An interconnected VoIP provider that partners with a facilities-based Public Switched Telephone Network (PSTN) Service Providers to obtain numbering resources and connectivity to the PSTN via the Service Provider partner's switch. A Class 2 interconnected VoIP provider is not considered a reseller in the context of the FCC definition of a Simple Port (refer to FCC Order 07-188 and FCC Order 09-41 for Simple Port definition). Class 2 interconnected VoIP providers must follow the appropriate Wireline-Wireline/Intermodal Flows (Simple or Non-Simple, whichever is applicable) for the LNP provisioning process, serving as the New Local Service Provider (NLSP) or Old Local Service Provider (OLSP), whichever is applicable.

**Class 3:** A non-facilities-based reseller of interconnected VoIP services that utilizes the numbering resources and facilities of another interconnected VoIP provider (analogous to the "traditional" PSTN reseller). A Class 3 interconnected VoIP provider is not considered a reseller in the context of the FCC definition of a Simple Port (refer to FCC Order 07-188 and FCC Order 09-41 for Simple Port definition). Class 3 interconnected VoIP providers must follow the appropriate Wireline-Wireline/Intermodal Flows (Simple or Non-Simple, whichever is

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applicable) for the LNP provisioning process, serving as the New Local Service Provider (NLSP) or Old Local Service Provider (OLSP), whichever is applicable.

- Figure 10 – Provisioning With Unconditional 10-Digit Trigger: This is a revised flow depicting steps when the Old Network Service Provider utilizes the 10-Digit Unconditional Trigger in their donor switch.

Key recommendations contained in this flow include:

- For both Simple and Non-Simple Ports, the wireline ONSP must deploy the 10-digit trigger in the donor switch, if technically feasible, or monitor the NPAC for activation in order to trigger the disconnect, or carriers perform a database query for every call origination.

- Figure 11 – Conflict Flow For The Service Creation Provisioning Process: This is a revised flow that depicts the steps when the Old Service Provider places a pending port into conflict due to an identified problem.

Key recommendations contained in this flow include:

- For wireline Simple Ports, the cutoff time for when the Old Service Provider can place a port into conflict in the NPAC is the later of a) 9:00pm in the predominate time zone of the NPAC region where the number is being ported one Business Day before the Due Date or b) the NPAC T2 Timer has expired. The restriction window for when the New Service Provider cannot remove the port from conflict is defined as two (2) NPAC Business Hours.

### **3.3. Recommended Industry LNP Best Practices**

During the development of this implementation plan recommendation, the “Define One Business Day” Sub-team and the full LNPA WG identified the following LNP Best Practices for consideration by the NANC and FCC. If endorsed and adopted, the LNPA WG intends to include these in its LNP Best Practices document to assist the industry in the porting process.

- With regard to the population of the Due Time on the New SP and Old SP NPAC Create messages, current industry practices for both Mechanized SOA and Low Tech Interface (LTI) users will be maintained for Simple Ports. As an industry Best Practice, the New SP should not activate a port before midnight (00:00:00) local time of the Due Date unless it has been verified with the Old SP that the port could be activated early without

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impacting the customer's service. Failing to verify first that the Old SP has completed all necessary steps in the port-out process, e.g., established the 10-Digit Unconditional Trigger, resolved any order fallout in systems, etc., could result in the customer's service being negatively impacted, such as inability to receive all of their calls.

- **Subscription Version (SV) Create**  
The NPAC/SMS expects to receive matching SV Create messages from the Old Service Provider (Old SP) and the New Service Provider (New SP) when facilitating porting of a telephone number. However, to prevent the possibility of the Old SP unnecessarily delaying a port, two timers were developed and referred to as T1 and T2. If the Old SP does not send a matching SV create message to the NPAC, the New SP can proceed with porting the telephone number after both timers expire. Some Service Providers choose not to send the concurring SV create, but rather allow the timers to expire.

As an Industry Best Practice, the LNPA Working Group concludes that all Service Providers should send the matching SV create messages to the NPAC/SMS. This will facilitate expeditious porting of telephone numbers and is more efficient than merely allowing timers to expire. The increased efficiency is especially beneficial in meeting the FCC mandated 1-day interval for simple ports.

[Note that the order in which the Old SP and New SP create messages arrive at the NPAC/SMS is immaterial.]

### **3.4. *Recommended NPAC and Local Service Order Activation (SOA) and Local Service Management System (LSMS) Change Orders***

During the development of the recommended requirements in support of FCC Order 09-41, the LNPA WG identified the following Change Orders required for the NPAC to support the shortened porting interval. These changes in the NPAC will also require changes in Service Provider local systems, e.g., SOA, LSMS, Operational Support Systems (OSSs), etc.

It is necessary for the LNPA WG to develop the detailed technical requirements for these Change Orders in order for NPAC, local system vendors, and Service Providers to develop and implement the software changes in time to meet the mandated

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implementation date. The development and finalization of these technical requirements will begin immediately.

At a high level, two Change Orders have been identified for development:

- A new additional NPAC timer set (called Medium timers) in support of the shortened interval.
- A method for the NPAC to determine which timer set to utilize on a port.

**3.5. LNPA WG Recommendations Related to FCC Order 09-41's Further Notice of Proposed Rulemaking**

The LNPA WG reached consensus on the following recommendations including items referenced in the Further Notice of Proposed Rulemaking (FNPRM) as part of FCC Order 09-41. The LNPA WG recommends that these be endorsed and adopted for immediate implementation at the commencement of One Business Day porting.

**3.5.1. Recommended Simple Port Definition Clarifications**

The current FCC definition of a Simple Port, as cited in FCC Order 09-41, Footnote 11 on page 3, is as follows:

“As the Commission previously has explained, simple ports are those ports that: (1) do not involve unbundled network elements; (2) involve an account only for a single line; (3) do not include complex switch translations (*e.g.*, Centrex, ISDN, AIN services, remote call forwarding, or multiple services on the loop); and (4) do not include a reseller.”

The “Define Simple Port” Sub-team and the full LNPA WG reached consensus on the following recommended clarifications to the current Simple Port definition:

- With respect to criteria (1) above on unbundled network elements, the following consensus was reached on clarifying language:

*The LNPA-WG's understanding of current industry practices regarding UNE involvement in porting a Simple Port is that the UNE's of Dedicated Transport, 911/E911, or Operational Support Systems are not a factor in determining or executing a Simple Port.*



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- With respect to criteria (2) above on a single line account, the following consensus was reached on clarification:

*A Simple Port is for a single telephone number (TN) in a single line account.*

- With respect to criteria (3) above on complex switch translations, the following consensus was reached on clarifying language:

*For single TN ports, the services cited as examples are not necessarily provided utilizing complex switch translations. If the other criteria defining a Simple Port would otherwise lead to classifying a port as Simple, the porting of the customer with any of these services could be classified as Simple.*

### **3.5.2. Recommended Customer Service Record (CSR) Requirements**

The “Local Service Request (LSR)” Sub-team and the full LNPA WG reached consensus on the following recommended requirements associated with Customer Service Records (CSRs).

- 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 passwords/PINs requested and assigned by the End User may be utilized as an End User validation field on an incoming LSR by the Old Network

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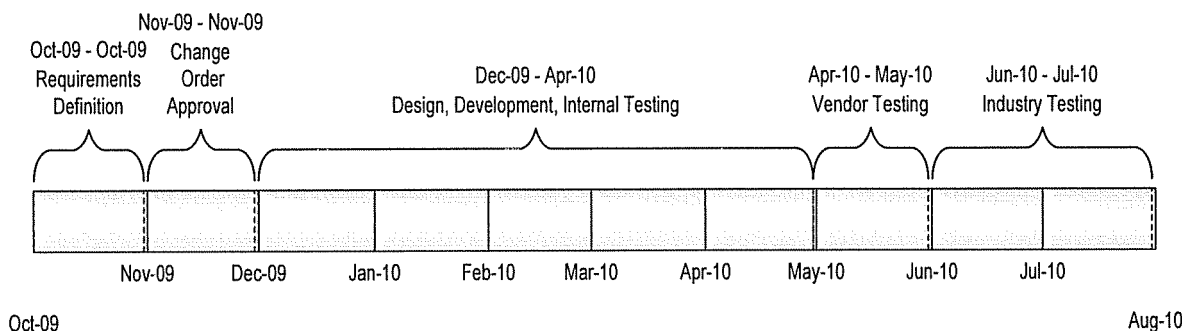
Service Provider/Old Local Service Provider. Any Service Provider assigned password/PIN may not be utilized as a requirement in order to obtain a CSR.

The LNPA WG respectfully recommends that these be endorsed by the North American Numbering Council (NANC) and adopted by the Federal Communications Commission (FCC).

## 4. Conclusion

During the development of this recommended implementation plan in support of the shortened porting interval mandated in FCC Order 09-41, many complex issues were addressed by a wide representation of the telecommunications industry, including large and small Incumbent Local Exchange Carriers (ILECs), large and small Competitive Local Exchange Carriers (CLECs), Wireless Service Providers, Cable Service Providers, Voice over Internet Protocol (VoIP) Service Providers, Regulators, numerous Carrier Associations, system vendors, Service Bureaus, and consultants. The spirit of cooperation and the desire to reach compromise on these complex and sometimes difficult issues are a testament to the industry, and especially, the participants' continued focus on the need to develop a recommendation that not only is in the best interest of the customer, but also can be implemented by vendors and Service Providers within the mandated implementation schedule.

The following is a very high-level rough timeline that the industry will follow as a guide in order to implement FCC Order 09-41 as mandated:



- NPAC Change Orders completed and submitted to the NAPM LLC with a recommendation that the NAPM LLC request a Statement of Work (SOW) from NeuStar: October 30, 2009
- SOW approved by NAPM LLC: November 2009
- Design, development, internal testing, and vendor-vendor testing period: December 1, 2009 – May 31, 2010

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- Industry testing (LSR/FOC and SOA/NPAC) and issues resolution  
June 1, 2010 – July 31, 2010
- Implementation deadline for affected entities: July 31, 2010
- Implementation deadline for small providers: January 31, 2011

The Local Number Portability Administration Working Group (LNPA WG) respectfully recommends that the North American Numbering Council (NANC) and the Federal Communications Commission (FCC) formally endorse and adopt the requirements identified in Section 3 of this implementation plan in their entirety.

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**5. Full LNPA WG and Sub-team Participants**

The following chart acknowledges and lists the individuals that participated in the full LNPA WG and/or the Sub-teams in order to develop this recommended implementation plan, and their respective Company that they represent.

An “X” in a column indicates an individual’s participation.

NAME	COMPANY	LNPA WG	“DEFINE ONE BUSINESS DAY” SUB-TEAM	“DEFINE SIMPLE PORT” SUB-TEAM	“LSR” SUB-TEAM	“OUT OF THE BOX” SUB-TEAM	“WICIS” SUB-TEAM
Paula Jordan	T-Mobile	X Co-Chair	X		X		
Jary Sacra	Verizon	X Co-Chair	X	X	X		
Jan Doell	Qwest	X	X Chair	X	X		
Jane Tiffany	Sprint Nextel	X	X	X Chair	X		
Nancy Sanders	Comcast	X		X Chair			
Linda Peterman	One Communications	X	X	X	X Chair	X	X
Teressa Patton	AT&T	X		X		X Chair	
Deb Tucker	Verizon Wireless	X	X	X		X	X Chair
Mary Gail Sullivan	360 Networks	X					
Alissa Medley	ATIS	X					X
Mark Lancaster	AT&T	X	X	X	X	X	

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NAME	COMPANY	LNPA WG	“DEFINE ONE BUSINESS DAY” SUB-TEAM	“DEFINE SIMPLE PORT” SUB-TEAM	“LSR” SUB-TEAM	“OUT OF THE BOX” SUB-TEAM	“WICIS” SUB-TEAM
Ron Steen	AT&T	X	X	X	X		
Tracey Guidotti	AT&T	X	X		X	X	
Renee Dillon	AT&T	X			X		
Lonnie Keck	AT&T	X	X	X	X		X
Drew Bretz	AT&T	X					
Manny Camacho	AT&T		X				
Dave Clippard	AT&T		X				
Barbara Hjelmaa	BrightHouse Networks	X					
Marian Hearn	Canadian LNP Consortium	X					
Brad E. Lerner	Cavalier Telephone	X	X	X			
Nancy Cornwell	CellCom	X					
Vicki Goth	Century Link	X	X	X			
Tonya Woods	Century Link		X	X	X		
Bill Solis	Comcast	X		X			
Tim Kagele	Comcast	X		X			
Cindy Sheehan	Comcast	X	X	X			
Ken Aspeslagh	Comcast	X					
Beth O'Donnell	Comcast	X		X			
Elizabeth Balvin	Covad	X					

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NAME	COMPANY	LNPA WG	“DEFINE ONE BUSINESS DAY” SUB-TEAM	“DEFINE SIMPLE PORT” SUB-TEAM	“LSR” SUB-TEAM	“OUT OF THE BOX” SUB-TEAM	“WICIS” SUB-TEAM
Anthony Hansel	Covad			X			
Cindy Williamson	Cox		X	X			
Dawn Howard	Cox		X	X			
Jennifer Hutton	Cox		X				
Susanne Howard	Cox	X					
Aimee Brice	Cox				X		
Matt Gerst	CTIA	X					
Dennis Robins	DER Consulting	X	X				
Greg Council	Evolving Systems	X			X	X	X
Steve Farnsworth	Evolving Systems	X				X	
Linda Bircham	Fairpoint		X	X			
Crystal Hanus	GVNW	X	X	X	X		X
Ann Vick	GVNW		X				
Bonnie Johnson	Integra	X	X	X	X		X
Kim Isaacs	Integra			X	X		
Stephanie Prull	Integra				X		X
Angie Mackey	JSI	X					
Bridget Alexander	JSI	X	X		X		

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NAME	COMPANY	LNPA WG	“DEFINE ONE BUSINESS DAY” SUB-TEAM	“DEFINE SIMPLE PORT” SUB-TEAM	“LSR” SUB-TEAM	“OUT OF THE BOX” SUB-TEAM	“WICIS” SUB-TEAM
Karen Hoffman	JSI	X	X				
Lynette T. Chirallah	NetNumber	X					
Mason Bach	Level 3	X					
Don Gray	Nebraska PSC		X				
Dave Garner	NeuStar	X			X		
Tim Rooks	NeuStar	X	X	X	X	X	X
John Nakamura	NeuStar	X	X	X	X	X	X
Paul LaGattuta	NeuStar	X	X	X	X	X	X
Steve Addicks	NeuStar	X	X	X	X	X	X
Syed Mubeen Saifullah	NeuStar	X	X		X	X	X
Marybeth Degeorgis	NeuStar	X					
Shannon Devigny	NeuStar	X					
Tara Farquhar	NeuStar	X					
Deepak Sonor	NeuStar	X					
Bill Reidway	NeuStar				X		X
Mary Conquest	Nuvox	X	X	X			
John McHugh	OPASTCO	X	X				
Peggy Rubino	Paetec	X	X	X			
Towanda Russell	RCN	X					
Matt Kohly	Socket	X		X			

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NAME	COMPANY	LNPA WG	“DEFINE ONE BUSINESS DAY” SUB- TEAM	“DEFINE SIMPLE PORT” SUB-TEAM	“LSR” SUB- TEAM	“OUT OF THE BOX” SUB- TEAM	“WICIS” SUB- TEAM
Mary Retka	Qwest	X					
Carolyn Brown	Qwest		X	X	X		
Lee Gomez	Qwest				X		
Carol Fricke	Sprint Nextel	X			X		
Lavinia Rotaru	Sprint Nextel	X	X	X		X	
Rosemary Emmer	Sprint Nextel	X					X
Jim Gampper	Sprint Nextel	X	X				
Neray Prakash	Sprint Nextel	X					
Sam Ximmies	Synchronoss Technologies	X					
Bob Bruce	Syniverse	X	X			X	
Sara Cole	TDS	X					
Pat White	Telcordia	X			X	X	X
Matt Gimmermann	Telcordia		X		X	X	X
John Malyar	Telcordia	X			X	X	X
Adam Newman	Telcordia	X	X		X	X	X
Anna Miller	T-Mobile	X		X			
Mohamed Samater	T-Mobile	X				X	X
Heather Patterson	TNS	X					
Amanda Molina	Townes	X	X				



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<b>NAME</b>	<b>COMPANY</b>	<b>LNPA WG</b>	<b>“DEFINE ONE BUSINESS DAY” SUB- TEAM</b>	<b>“DEFINE SIMPLE PORT” SUB-TEAM</b>	<b>“LSR” SUB- TEAM</b>	<b>“OUT OF THE BOX” SUB- TEAM</b>	<b>“WICIS” SUB- TEAM</b>
Dennis Rose	TSTCI			X			
Shelly Pedersen	TW Telecom			X			
Tanya Golub	US Cellular	X					
David Lund	US Cellular	X					
Cindy Olson	US Cellular	X					
Darla Pistulka	Vantage Point		X				
Jason Lee	Verizon	X	X	X			
Darren Krebs	Vonage	X					
Tom Zablocki	Vonage	X					
Tana Henson	Windstream		X				
Loriann Burke	XO Communications	X	X	X			
Triki Gaugler	XO Communications	X	X	X			
Dawn Lawrence	XO Communications	X		X			

# Exhibit B



## Terms and Conditions

Download a PDF of our Terms and Conditions

### **TERMS AND CONDITIONS**

#### **Definitions**

"You" and "Your" mean the person or entity that newly subscribes or makes changes to Communication Services or purchases or leases Equipment, including any on-line transactions, subject to this Agreement. "Agreement" includes these Terms and Conditions and your Service Order. "We", "our", and "Windstream" refer to Windstream Communications, Inc., its subsidiaries and affiliates, as well as any other person or entity doing business as Windstream and providing Communication Services or Equipment to you. "Communication Service(s)" or "Service(s)" refer to any services you have asked us to provide to you through this Agreement, including any request for new services or changes to existing services made on-line. "Equipment" means any communications equipment or accessories you purchase or lease from us or use in any manner in connection with your Services. "Service Order" means the form (whether paper or electronic, including on-line order forms) on which you apply for or make changes to Services and includes certain additional Terms and Conditions for your Services. "Terms and Conditions" include the following provisions as maintained at [www.Windstream.com](http://www.Windstream.com) and any provisions in your Service Order that set forth the manner in which we provide Equipment and Service to you that may supplement these Terms and Conditions, such as the length of time you will subscribe to a Service, rate plans, access charges, fees, taxes and surcharges, choice of long distance carrier, and the Equipment you have selected.

#### **Acceptance**

You accept this Agreement when you do any of the following: (a) give us your written or electronic signature, (b) tell us orally or electronically that you accept (i.e., by clicking the "I Accept" button for on-line purchases or account changes), or (c) use or attempt to use any of the Equipment or Services. If you have never used the Services before and do not wish to be bound by these Terms and Conditions, do not begin using the Services or Equipment and notify us immediately. By accepting this Agreement, you acknowledge that you are eighteen (18) years of age or older, are competent to enter into a contract with us, and are authorized to purchase new services or make changes to an existing account.

#### **Term**

- a. Fixed Term. You agree to subscribe to the Services for the length of time identified on the Service Order. The Services you receive after the end of the term will be provided on a month-to-month basis and remain at all times subject to the Terms and Conditions.
- b. Month-to-Month Term. If no length of time is identified on the Service Order, then the term is month-to-month.

#### **Termination by You**

Fixed Term. If you subscribe to a Service for a fixed term and you terminate that Service before the expiration of the fixed term then you will be required to pay us an early cancellation fee as specified on your Service Order. If there is no early cancellation fee specified on your Service Order, then you will be required to pay \$200 per line for any early cancellation. In addition, you remain liable for payment of all outstanding charges for all Services you used and Equipment you purchased from us prior to termination, and you will be charged for the last month of Service with no proration or credit for any used period if you terminate Service prior to the last day of your billing cycle.

b. Month-to-Month Term. You may terminate a Service to which you subscribe on a month-to-month basis at any time by notifying us. You remain liable for payment of all outstanding charges for all Services you used and Equipment you purchased from us prior to termination, and you will be charged for the last month of Service with no proration or credit for any used period if you terminate Service prior to the last day of your billing cycle.

c. Bundled Services. If you receive special rates in return for subscribing to multiple Services and you subsequently unbundle, terminate, or disconnect any of these Services at any time, then we may adjust the rates for the remaining Service(s).

d. Change in Location. A change in your service address or the location to which any Service is provided to you may constitute, at our sole discretion, termination of the Services or result in an increase in the prices you must pay for the Services.

e. Number Portability. A request by you to port your number will be deemed a request by you to terminate your Agreement.

#### **Termination by Us**

We may limit, interrupt, terminate or refuse to provide a Service for the following reasons, for any other good cause: (a) if you do not honor any provision of these Terms and Conditions (including payment obligations), (b) if you use a Service in a manner that adversely affects Service to other customers or harasses our customers, our employees, or others, (c) if you or others use a Service to engage in fraud or unlawful conduct or are suspected of doing so, (d) if you modify your phone or any software residing thereon from the original manufacturer specifications, including for the purpose of accessing non-Windstream services, (e) if your Service is used in a manner that is excessive or unreasonable with respect to volume or length of calls when compared to the predominant volume or length of call of other customers on a similar rate plan or in your geographic area. You may not resell any Service. We may restore such interrupted or terminated Service, in our sole discretion, following your correction of the violation and payment of any amounts due, including any restoration charge we assess for restoring your Service.

#### **Charges for Services and Equipment**

You are responsible for paying all charges applicable to your Equipment and Service provided to you, including: access charges, features, toll, long distance, and directory assistance. In addition, you are responsible for paying any taxes, surcharges, fees and assessments imposed by us or a governmental authority from time to time in connection with the Services or Equipment.

#### **Billing Information Provided by You**

To determine whether certain taxes, fees and surcharges are applicable to Service provided to you, we are required by federal law to obtain your street address, which must be within our service area. You represent and warrant that the address you provide us to obtain Service is correct, and you acknowledge that we are relying on this information to determine which taxes, fees or surcharges are applicable to you Service. You agree to notify us if your address changes. In the event you do not provide us with a valid address or address change, you understand and agree that you may be responsible for additional taxes, fees or surcharges for your Service, and we may terminate your Service. For on-line orders, all applicable taxes, fees and surcharges may not be reflected in the Service Order, but will appear on your Windstream bill.

#### **Billing and Payments**

All Service and other recurring charges are billed one month in advance and we will not prorate charges or provide you a credit for any partial periods if you terminate your service on a date prior to the last day of your billing cycle. We will bill you monthly for all charges associated with the Services, and we will invoice you for all charges associated with Equipment. Payment in full is due no later than the due date indicated on your bill. If you have authorized payment for Services or Equipment by credit card or by debiting a bank account, no additional notice or consent is required before we invoice the credit card or debit the bank account for all amounts due to us for any reason. We may accept late payments, partial payments or any payments marked as being "payment in full" or as being settlement of any dispute without losing any of our rights under this Agreement. You agree to pay costs and fees we incur to collect an unpaid balance from you.

#### **Disputed Bills**

You agree that you have a responsibility to review bills in a timely manner and that you may dispute any portion of a bill in good faith. To dispute a bill, you must deliver to us in writing the specific basis for the dispute within thirty (30) days after the date on the bill. If you comply with the dispute process, you may withhold disputed amounts from us until the dispute is resolved, but you are responsible for paying us for all other undisputed charges. You agree that we deny and you waive automatically any dispute that is not filed until one year or later after the date of issuance of the applicable bill or invoice.

#### **Credits and Deposits**

You authorize us to ask credit-reporting agencies for credit information about you. We may, in our discretion, require you to submit a deposit as security for payment of charges. An additional deposit may be required if either the amount or number of Services is increased or your credit rating changes. Simple interest will be paid on the

cash deposit for the period it is held by us and will be refunded if satisfactory credit has been established or upon termination of service. We reserve the right to apply the deposit to any amount due and unpaid. We may require a guarantee of payment by an individual or entity approved by us.

**Internet**

If you use any of the Services to access the Internet, you agree to abide by our Acceptable Use Policy, available via a link on [www.Windstream.net](http://www.Windstream.net), and by any other policies posted there. The Acceptable Use Policy generally provides that you may not use our Internet access Service to (1) engage in illegal activity, (2) violate the network policies of any network accessed through our Service or (3) engage in any activity that interferes with other Internet users' use and enjoyment of the Internet or our Service. The Acceptable Use Policy may change periodically, and it is your responsibility to review it from time to time and comply with any changes.

**Personal Identifiers**

We assign telephone numbers, e-mail addresses and other personal identifiers in connection with the Services. Unless we provide you advance notice, you have no proprietary right to any such identifiers, and we reserve the right to change them upon notice to you. In the event that you become entitled to transfer a personal identifier to another party to obtain any Services we provide you, we reserve the right, prior to honoring the request for transfer, to charge a fee for the transfer and to collect any money owed by you for Services or Equipment.

**Services Provided by Third Parties**

The Services will be provided either by us or by our third party vendors or contractors. We reserve the right to change or modify the source of any Services provided to you without notice.

**Unauthorized Use by Third Parties**

You agree that the phone on which your Windstream Service is activated may not be used to access any third-party services equivalent to Services provided, or Services made available, by Windstream even if you declined to purchase such Services from Windstream. Your phone contains programming designed to enable access to Windstream Services only. Using any manual or electronic means to circumvent any restrictions placed on your phone or to modify without authorization any programming supplied on your phone is a violation of your Agreement.

**Privacy and Customer Proprietary Network Information**

You authorize us to monitor and record communications to us regarding your account or the Services for purposes of quality assurance. For on-line orders, we may implement reasonable procedures, including but not limited to, validating information provided by you or restricting the amount of equipment and services purchases on-line by a single customer. Windstream reserves the right to cancel or reject on-line orders at any time for security reasons or privacy concerns.

We will not give you notice of any subpoenas or court orders related to your account or use of Services unless required by law. Information in our billing and customer care systems concerning your account and your use of Services belongs to us, and you have no expectation of privacy with respect to such information. You agree that we may release information we have about you when required to do so by law, to provide to third parties solely for the purpose of assisting us in providing any Service to you, or if we reasonably believe that any emergency involving immediate harm to a person or property requires disclosure.

We may analyze your account and usage information and share this information with other Windstream entities to communicate with you regarding Equipment or Services that may become available to you. If you do not want us to provide your information to other Windstream entities for this purpose, please notify us.

To provide Services to you, we maintain certain customer proprietary network information, or CPNI, that includes the types of services that you currently have or have purchased, how you use the services, and billing information for the services. When you view your account information or shop for products/services on-line, you agree that we may display your CPNI on-line to fill orders or allow you to make account changes. For additional information about CPNI, please refer to our Privacy Policy at [www.Windstream.com](http://www.Windstream.com) or [www.Windstream.net](http://www.Windstream.net).

**Theft and Fraud**

If your Service or Equipment is lost or stolen or fraudulently used, then you are responsible for all usage incurred before we receive notice from you of such loss or theft. You agree to cooperate in the investigation of fraud or theft and to provide us

with such information and documentation as we may request (including affidavits and police reports).

**LIMITATION OF LIABILITY**

IN THE EVENT WE ARE FOUND TO BE RESPONSIBLE TO YOU FOR DAMAGES IN ANY WAY RELATING TO THE SERVICES OR EQUIPMENT, YOU AGREE THAT OUR LIABILITY TO YOU WILL NOT EXCEED YOUR PRO-RATED MONTHLY RECURRING CHARGE FOR SERVICES DURING THE PERIOD IN WHICH YOU INCUR SUCH DAMAGES. WE ARE NOT LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (SUCH AS LOST PROFITS OR LOST BUSINESS OPPORTUNITIES), PUNITIVE OR EXEMPLARY DAMAGES, THE COST OF ALTERNATIVE SERVICES, OR ATTORNEY'S FEES.

**DISCLAIMER OF WARRANTIES**

**WE MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING THE SERVICES OR EQUIPMENT YOU RECEIVE FROM US, AND DISCLAIM ANY WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** WE ARE NOT RESPONSIBLE FOR CIRCUMSTANCES BEYOND OUR CONTROL, INCLUDING WITHOUT LIMITATION, ACTS OR OMISSIONS OF OTHERS, ATMOSPHERIC CONDITIONS, OR ACTS OF GOD. WE DO NOT PROMISE UNINTERRUPTED OR ERROR-FREE SERVICE. WE MAY NOT MANUFACTURE ANY EQUIPMENT OR SOFTWARE THAT YOU MAY USE IN CONNECTION WITH YOUR SERVICE, AND YOUR ONLY WARRANTIES AND REPRESENTATIONS WITH RESPECT TO EQUIPMENT OR SOFTWARE ARE THOSE PROVIDED BY THE MANUFACTURER (WITH RESPECT TO WHICH WE HAVE NO LIABILITY WHATSOEVER).

**About These Terms and Conditions**

a. Record Retention. You acknowledge and agree that (i) Windstream will not maintain a paper copy of your Agreement, (ii) Windstream will maintain your rate plan and feature information electronically, and (iii) Windstream will maintain its copy of the Terms and Conditions at [www.windstream.com](http://www.windstream.com). If you lose your copy of the Terms and Conditions, you may retrieve the ten-current electronic copy from [www.windstream.com](http://www.windstream.com) at any time.

b. Changes. We may change these Terms and Conditions, including any change in any charge or fee, or the imposition of a new charge or fee, at any time if we give you notice in advance of the change. If we make a change to these Terms and Conditions that is material and you do not wish to accept such material change, you may terminate your Agreement for the affected Service by giving us notice within thirty (30) days, in which case you will not be subject to an early cancellation fee. You will, however, still be responsible for all charges for Services and Equipment made before you terminated your Agreement for that Service. A material change is ONLY a change that (a) terminates or substantially reduces the availability of a Service for you or (b) results in the increase of any charge by more than ten percent (10%) of the monthly access charge for that Service. Material changes in your Service NO NOT include the increase in, or imposition of: (1) any charge required to be collected by any governmental authority, or (2) an charge permitted to be collected by any governmental authority to recoup our expense for the provision of a service required by that governmental authority.

c. Additional Terms and Conditions. You may be subject to Terms and Conditions in addition to those included in this Agreement or in your Service Order, depending on the particular Service or Equipment that we provide to you. Any additional Terms and Conditions will be maintained at [www.windstream.com](http://www.windstream.com) or can be obtained by calling a service representative at 877-807-9463. The Terms and Conditions specific to your Service or Equipment will prevail over any Terms and Conditions contained in this Agreement.

**Applicable Law**

Your Agreement and our provision of Services to you are subject to (a) the laws of the state identified in the billing address that you have provided us and (b) any applicable federal or state laws. In the event of an inconsistency between any governmental requirement and this Agreement regarding the provision of a Service that is subject to the governmental requirement, the provisions of the governmental requirement will apply to the extent necessary to avoid the inconsistency.

**Assignment**

We may assign this Agreement to another entity without any advance consent from or notice to you. You may not assign this Agreement without our consent.

**No Waiver, Severability**

If we do not enforce any right or remedy available under this Agreement, that failure is not a waiver. If any part of this Agreement is held invalid or unenforceable, the remainder of this Agreement will remain in force.

**Third Parties**

This Agreement is for the benefit of you and us only, and not any third party.

**Entire Agreement**

In the absence of a governing tariff or signed written contract, this Agreement, including its Terms and Conditions and your Service Order, is the entire Agreement between you and us, which may only be amended as described above. This Agreement supersedes any and all statements or promises made to you by any of our employees or agents.