

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of) File No.: EB-08-IH-0728
)
Communication Options, Inc.) Acct. No.: 201232080031
)
) FRN: 0003735230

ORDER

Adopted: September 21, 2012

Released: September 24, 2012

By the Chief, Enforcement Bureau:

1. In this Order, we adopt a Consent Decree entered into between the Enforcement Bureau (Bureau) and Communication Options, Inc. (COI). The Consent Decree terminates an investigation by the Bureau against COI for possible violations of Section 251(b)(2) of the Communications Act of 1934, as amended (Act),¹ concerning COI's porting of its customers' telephone numbers to new service providers.

2. A copy of the Consent Decree negotiated by the Bureau and COI is attached hereto and incorporated herein by reference.

3. After evaluating the facts before us and reviewing the terms of the Consent Decree, including its three year compliance plan, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether COI possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 503(b) of the Act,² and Sections 0.111 and 0.311 of the Commission's rules,³ the Consent Decree attached to this Order **IS ADOPTED**.

¹ 47 U.S.C. § 251(b)(2).

² 47 U.S.C. §§ 154(i), 503(b).

³ 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED.**

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Steve Augustino, Esq., Kelley Drye & Warren LLP, Washington Harbour, Suite 400, 3050 K Street, N.W., Washington, D.C. 20007-5108.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief
Enforcement Bureau

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Communication Options, Inc.) Acct. No.: 201232080031
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CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Communication Options, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether Communication Options, Inc. violated Section 251(b)(2) of the Communications Act of 1934, as amended,¹ concerning the company's porting of its customers' telephone numbers to new service providers.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "COI" or "Company" means Communication Options, Inc. and its predecessors-in-interest and successors-in-interest.
 - (e) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which COI is subject by virtue of its business activities.
 - (g) "Compliance Plan" means the plan described in this Consent Decree at paragraph 10.
 - (h) "Covered Employees" means all employees and agents of COI who perform, or supervise, oversee, or manage the performance of, duties that relate to COI's responsibilities under the Communications Laws, including the LNP Rules.
 - (i) "Effective Date" means the date on which the Bureau releases the Adopting Order.

¹ 47 U.S.C. § 251(b)(2).

- (j) “Investigation” means the investigation initiated by the Bureau in File No. EB-08-IH-0728 regarding possible violations of Section 251(b)(2) of the Act.
- (k) “LNP” means Local Number Portability.
- (l) “LNP Rules” means federal regulatory obligations concerning the porting of customers’ telephone numbers from one service provider to another.
- (m) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by COI to implement the Compliance Plan.
- (n) “Parties” means Communication Options, Inc. and the Bureau, each of which is a “Party.”
- (o) “Rules” means the Commission’s regulations found in Title 47 of the Federal Regulations.

II. BACKGROUND

3. Local Number Portability (LNP) is “the ability of users of telecommunications services to retain, at the same location, existing telephone numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.”² Under the Act, all telecommunications service providers have a duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.³ During the period relevant to the Investigation, the Commission required that wireline carriers generally complete ports within four business days.⁴ The Commission also precluded service providers from obstructing or delaying the transfer of their customers’ telephone numbers to new service providers.⁵ Porting out service providers may request information reasonably necessary to validate and implement port requests,⁶ but may not

² 47 U.S.C. § 153(30); *see also* 47 C.F.R. § 52.21(l). The Commission has interpreted this language to mean that “consumers must be able to change carriers while keeping their telephone number as easily as they may change carriers without taking their telephone number with them.” *Telephone Number Portability – Carrier Requests for Clarification of Wireless-Wireless Porting Issues*, Memorandum Opinion and Order, 18 FCC Rcd 20971, 20975, para. 11 (2003) (subsequent history omitted).

³ 47 U.S.C. § 251(b)(2).

⁴ See *Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697, 23713-13, para. 38 (2003) (subsequent history omitted) (stating that “the current four business day porting interval represents the outer limit of what we would consider to be a reasonable amount of time in which wireline carriers may complete ports”); *see also Telephone Number Requirements for IP-Enabled Services Providers; Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability; CTIA Petition for Declaratory Ruling on Wireline-Wireless Porting Issues, Final Regulatory Flexibility Analysis, Numbering Resource Optimization*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, 19562, para. 61 (2007) (*Porting Information Order, Declaratory Ruling, and NPRM*) (subsequent history omitted). The Commission subsequently reduced the porting intervals for simple wireline-to-wireline and simple intermodal ports to one business day absent the new provider’s or the customer’s request for a longer interval. *See* 47 C.F.R. § 52.35.

⁵ *Porting Information Order, Declaratory Ruling, and NPRM*, 22 FCC Rcd at 19553-58, paras. 42-49.

⁶ *Id.* at 19554, para. 42.

demand “information necessary to settle the customer’s account or otherwise enforce any provisions of the customer’s contract.”⁷ Porting out service providers also may notify a customer of the consequences of terminating service, but in the process of doing so may not refuse to port a customer’s number.⁸

4. COI is an Ohio-based provider of communications services, offering business and residential customers local and long distance telephone, messaging, and Internet access services.⁹ After receiving a complaint from another telecommunications service provider that COI was refusing to port a customer’s number due to a billing dispute between COI and the customer, the Bureau issued a letter of inquiry to COI requesting information concerning COI’s number porting practices.¹⁰ COI responded to the LOI on April 1 and April 9, 2008.¹¹

III. TERMS OF AGREEMENT

5. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

6. **Jurisdiction.** COI agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

7. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its Investigation. In consideration for the termination of said Investigation, COI agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against COI concerning the matters that were the subjects of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on

⁷ *Id.* at 19555, para. 43.

⁸ *Id.*

⁹ See Communication Options, Inc. Homepage, <http://www.coi.net/> (last visited June 26, 2012).

¹⁰ See Letter of Inquiry from Trent B. Harkrader, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Stephen K. Vogelmeier, President, Communication Options, Inc. (Mar. 24, 2008) (on file in EB-08-IH-0728) (LOI).

¹¹ Letter from Stephen K. Vogelmeier, President, Communication Options, Inc., to David Janas, Special Counsel, Investigations and Hearings Division, FCC Enforcement Bureau (Apr. 1, 2008) (LOI Response); Letter from Stephen K. Vogelmeier, President, Communication Options, Inc., to David Janas, Special Counsel, Investigations and Hearings Division, FCC Enforcement Bureau (Apr. 9, 2008) (Supplemental LOI Response).

its own motion against COI with respect to COI's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission authorizations.

9. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, COI shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that COI complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the LNP Rules prior to assuming his/her duties.

10. **Compliance Plan.** For purposes of settling the matters set forth herein, COI agrees that it shall within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws, including the LNP Rules, and with the terms and conditions of this Consent Decree. The Compliance Plan shall implement the following procedures:

- (a) **Operating Procedures.** Within sixty (60) calendar days after the Effective Date, COI shall establish Operating Procedures that all Covered Employees shall follow to help ensure COI's compliance with the LNP Rules. COI's Operating Procedures shall include internal procedures and policies specifically designed to ensure that COI ports numbers within the time frames set forth in those rules. COI shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the LNP Rules.
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Communications Laws that apply to COI, including the LNP Rules, and set forth the Operating Procedures that Covered Employees shall follow to help ensure COI's compliance with the LNP Rules. COI shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. COI shall distribute any revisions to the Compliance Manual promptly to Covered Employees. The Compliance Manual will require personnel, including Covered Employees, to contact COI's Compliance Officer and, if appropriate, regulatory legal counsel, with any questions or concerns that arise with respect to COI's obligations under the LNP Rules.
- (c) **Compliance Training Program.** COI shall establish and implement a Compliance Training Program on compliance with the Communications Laws, including the LNP Rules, and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of COI's obligation to report any noncompliance with the LNP Rules under paragraph 11 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within ninety (90) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the Effective Date shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. COI shall repeat the compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

- (d) **Termination Date.** Unless stated otherwise, the requirements of this Compliance Plan shall expire thirty-six (36) months after the Effective Date.

11. **Reporting Noncompliance.** COI shall report any noncompliance with the LNP Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that COI has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that COI has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, S.W. Washington, D.C. 20554, with a copy submitted electronically to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, Pamela S. Kane at Pamela.Kane@fcc.gov, and David Janas at David.Janas@fcc.gov. The reporting obligations set forth in this paragraph shall expire thirty-six (36) months after the Effective Date.

12. **Compliance Reports.** COI shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of COI's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the LNP Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of COI, stating that the Compliance Officer has personal knowledge that COI (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 11 of this Consent Decree.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with Section 1.16 of the Rules¹² and be subscribed to as true under penalty of perjury in substantially the form set forth in Section 1.16.
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of COI, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of noncompliance; (ii) the steps that COI has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that COI has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, S.W., Washington, D.C. 20554, with a copy submitted electronically to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, Pamela S. Kane at Pamela.Kane@fcc.gov, and David Janas at David.Janas @fcc.gov.

¹² 47 C.F.R. § 1.16.

13. **Section 208 Complaints: Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act¹³ against COI or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by COI with the Communications Laws.

14. **Voluntary Contribution.** COI agrees that it will make a voluntary contribution to the United States Treasury in the amount of sixty-five thousand dollars (\$65,000) (Voluntary Contribution). Due to inability to make a lump sum payment, such Voluntary Contribution shall be made in installments (each an Installment Payment). The first Installment Payment in the amount of two thousand seven hundred eight dollars and thirty-three cents (\$2,708.33) is due within thirty (30) calendar days after the Effective Date. The balance of the Voluntary Contribution will be made in twenty-two consecutive monthly payments of two thousand seven hundred eight dollars and thirty-three cents (\$2,708.33), followed by a final installment of two thousand seven hundred eight dollars and forty-one cents (\$2,708.41), payable on the first day of each month beginning with the second month following the Effective Date. The final payment is due on the first day of the twenty-fifth month following the Effective Date (Maturity Date). COI acknowledges and agrees that upon execution of this Consent Decree, the Voluntary Contribution and each Installment Payment shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).¹⁴ Upon an Event of Default, all procedures for collection permitted by law may, at the Commission's discretion, be initiated. In addition, COI agrees that it will make the first and all subsequent Installment Payments in United States Dollars without further demand or notice by the dates specified above. COI shall also send electronic notification of payment to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov, Pamela S. Kane at Pamela.Kane@fcc.gov, and David Janas at David.Janas@fcc.gov on the date said Installment Payments are made. The Installment Payments must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁵ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O.

¹³ 47 U.S.C. § 208.

¹⁴ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

¹⁵ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

15. **Event of Default.** COI agrees that an Event of Default shall occur upon the failure by COI to pay the full amount of any Installment Payment on or before the due date specified in this Consent Decree.

16. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Voluntary Contribution shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Voluntary Contribution, together with interest, as aforesaid, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717, and administrative charge(s), plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by COI.

17. **Waivers.** COI waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues the Adopting Order as defined in this Consent Decree. COI shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither COI nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and COI shall waive any statutory right to a trial *de novo*. COI hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act,¹⁶ relating to the matters addressed in this Consent Decree.

18. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

19. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which COI does not expressly consent) that provision will be superseded by such Commission rule or order.

20. **Successors and Assigns.** COI agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

21. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Communications Laws.

22. **Termination Date.** The requirements of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

¹⁶ See 5 U.S.C. § 504; 47 C.F.R. Part 1, Subpart K.

23. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

24. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

25. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

26. **Counterparts.** This Consent Decree may be signed in counterpart (including by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief
Enforcement Bureau

Date

Scott Halliday
Secretary and Treasurer
Communication Options, Inc.

Date