

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Docket No. 05A-061T

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**JOINT MOTION TO APPROVE STIPULATION AND SETTLEMENT AGREEMENT**

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IN THE MATTER OF THE APPLICATION OF NATIONSLINE COLORADO, INC. FOR A  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE LOCAL  
EXCHANGE TELECOMMUNICATIONS SERVICES AND LETTER OF REGISTRATION  
TO PROVIDE EMERGING COMPETITIVE TELECOMMUNICATIONS SERVICES.

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NationsLine Colorado, Inc. (NationsLine) and Staff of the Colorado Public Utilities  
Commission (Staff) (Staff and NationsLine collectively, Parties) hereby respectfully request that  
the Commission approve the Stipulation and Settlement Agreement (Stipulation) dated May 16,  
2005, which is being filed today with this joint motion. A copy of the Stipulation is attached as  
Attachment A.

The Stipulation is a negotiated compromise of all issues that were or could have been  
raised in this proceeding. The Parties have both had the opportunity to participate in the drafting  
of the Stipulation. The Parties state that reaching agreement by means of a negotiated settlement  
is in the public interest; and that the results of the compromises and settlements reflected in the  
Stipulation are just, reasonable, and in the public interest.

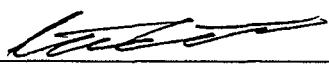
The Parties request that the Commission decide this motion and NationsLine's  
application on the terms set forth in the attached Stipulation without conducting an oral hearing.  
It is the Parties' belief that the issues in this matter are sufficiently straightforward that no oral  
hearing is required. If, however, the Commission determines that a hearing is necessary and

orders one to take place, the Parties will appear to provide testimony in support of the Stipulation.

The Parties respectfully request that the Commission approve the Stipulation in its entirety without modification.

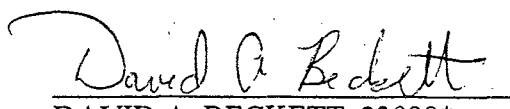
DATED this 16<sup>th</sup> day of May 2005.

**FOR NATIONSLINE COLORADO, INC.**

  
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BEFORE THE PUBLIC UTILITIES COMMISSION

STATE OF COLORADO

Docket No. 05A-061T

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### **STIPULATION AND SETTLEMENT AGREEMENT**

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This Stipulation and Settlement Agreement (Stipulation) is entered into by and between  
Staff of the Colorado Public Utilities Commission (Staff) and NationsLine Colorado, Inc.  
(NationsLine) (Staff and NationsLine collectively, Parties, and individually, Party).

### **INTRODUCTION AND BACKGROUND**

1. NationsLine is a Virginia corporation, having its principal office in Roanoke, Virginia.
2. On February 11, 2005, NationsLine initiated this docket by filing its Application for Certificate of Public Convenience and Necessity (CPCN) to Provide Local Exchange Telecommunications Services and Letter of Registration to Provide Emerging Competitive Telecommunications Services (Application).
3. Staff timely filed its Notice of Intervention in this matter on March 28, 2005. Staff is the only intervenor in this docket.

4. The Parties now stipulate and agree that the Colorado Public Utilities Commission should approve the Application on the terms set forth in this Stipulation.

#### **TERMS OF STIPULATION AND SETTLEMENT**

5. Pursuant to § 40-15-503.5, C.R.S., NationsLine shall obtain an irrevocable letter of credit (ILOC). The Colorado Public Utilities Commission shall be named as the beneficiary. NationsLine's ILOC must have an effective period of three (3) years (although the Parties agree that it may be renewable on a yearly basis), which three year period shall commence on the date NationsLine's initial tariff to provide regulated telecommunications service to any customer under the CPCN approved in this docket becomes effective. The ILOC shall include a clause for 30 days' written notice to the Colorado Public Utilities Commission prior to cancellation, which notice shall be submitted to the Colorado Public Utilities Commission directly by the bank. There should be a statement providing that, in the event of a default, the issuer shall pay the entirety to the Colorado Public Utilities Commission. Concurrent with the filing of an Advice Letter and initial tariff to provide such telecommunications services, NationsLine shall file with the Colorado Public Utilities Commission a verified statement, signed by an officer of NationsLine, stating the effective date of the ILOC, the amount guaranteed by the ILOC and the term of the ILOC. NationsLine shall attach proof of issuance, term, and the amount of the issuer's guarantee to the verified statement.

6. Initially, the ILOC shall be for the amount of fifty thousand dollars (\$50,000), which will be the minimum amount required for the duration of the ILOC. The formula used to calculate the amount subject to the ILOC is attached to this Stipulation as Exhibit A and incorporated herein.

7. The issuer of the ILOC shall be a bank with the proper certifications and in good standing in Virginia.

8. Within thirty (30) days of the date the number of NationsLine's revenue producing lines<sup>1</sup> reaches one thousand (1,000) for the first time, NationsLine shall recalculate the amount guaranteed by the ILOC that will be required and shall file a report with the Colorado Public Utilities Commission that clearly shows the number of revenue producing lines and the restated ILOC amount that will be required, using the same formula that was the basis for the initial amount of the ILOC, and which is attached as Exhibit A. Within thirty (30) days after the thirty-day report period has expired, an officer of NationsLine shall file with the Colorado Public Utilities Commission a verified statement that the amount guaranteed by the ILOC has been increased to the required amount and that identifies the new term of the ILOC. NationsLine shall attach proof of issuance, term, and the amount of the issuer's guarantee to the verified statement.

9. Beginning in the year that NationsLine offers regulated telecommunications services to its customers pursuant to its effective tariff, NationsLine shall file a report with the Colorado Public Utilities Commission no later than December 31 of each year that the ILOC is required. The report shall include the total number of revenue producing lines for the six (6) months preceding the date of the report, any change in the number of revenue producing lines for the six (6) months preceding the date of the report, the amount of the existing ILOC, and any recalculation of the amount guaranteed by the ILOC that may be required. In addition, the report

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<sup>1</sup> The term "revenue producing lines" shall mean lines that have been activated and for which customers are being billed. In the event NationsLine sells systems that serve multiple lines, the calculation of "revenue producing lines" or the equivalent shall be made pursuant to Federal Communication Commission Form 477, "Instructions for the Local Competition and Broadband Reporting Form."

shall include a statement verified by an officer of NationsLine confirming that the ILOC is still in effect and stating the term remaining in the ILOC.

10. An increase in the amount guaranteed by the ILOC will not be required unless the recalculation exceeds twenty percent (20%) of the amount of the existing ILOC.

11. In the event of a default, the monies received by the Colorado Public Utilities Commission from the ILOC shall be disbursed as set forth in this paragraph. Disbursement shall be made on a percentage basis, as set forth in Exhibit A. Disbursement of the monies received shall be made as described below:

a. To funds mandated by the Colorado Public Utilities Commission and Colorado statute, including the Colorado High Cost Support Mechanism, the Low Income Telephone Assistance Program, the Fixed Utilities Fund, 9-1-1, and the Telecommunications Relay Service.

b. To wholesale telecommunications provider(s), specifically for services provided to NationsLine which payment has not yet been received on undisputed amounts; and for the wholesale telecommunications provider's costs of providing notice to customers if NationsLine fails to do so due to NationsLine's discontinuance of providing service, after verification of those costs by Staff.

c. To refund customer deposits and prepayments for telecommunications services not yet received in the event that NationsLine discontinues service to its customers. Upon attestation by an officer of NationsLine that all refunds owed to customers for payment for services not yet received has been rendered and the disbursement of the funds to all other parties has been completed, the Colorado Public

Utilities Commission shall disburse to NationsLine any remaining proceeds from the ILOC up to the amount of the refunds NationsLine issued to customers.

d. For costs incurred by the Colorado Public Utilities Commission for items including, but not limited to, notices mailed by the Colorado Public Utilities Commission or the designated default provider if NationsLine discontinues service and fails to mail notice to customers, as required by 4 CCR 723-25-7.4 through 8; any costs incurred by the Colorado Public Utilities Commission that are associated with the transitioning of customers to another provider; and any Colorado Public Utilities Commission-incurred bankruptcy court costs.

12. At any time any portion of the amount guaranteed by the ILOC is disbursed, NationsLine shall renegotiate the ILOC in a manner consistent with all of the requirements of Paragraphs 5, 6, and 7 above. The amount guaranteed by the renegotiated letter of credit shall be the higher of fifty thousand dollars (\$50,000) or the amount established in accordance with the formula contained in Exhibit A.

13. NationsLine shall be considered in default of the ILOC in the following circumstances:

a. Untimely (*i.e.*, late by more than thirty (30) days) remittance or failure to remit payments to statutory funds (including the Colorado High Cost Support Mechanism, the Low Income Telephone Assistance Program, the Fixed Utilities Fund, 9-1-1, and the Telecommunications Relay Service); untimely remittance or failure to submit undisputed payments to wholesale providers; untimely payment or failure to pay any refunds, credits or deposits owed to customers; and

b. Untimely filing or failure to file reports required by the Colorado Public Utilities Commission including, but not limited to: annual reports; line count report when the number of revenue-producing lines exceeds one thousand (1,000) for the first time; verified annual statements of line counts and amounts guaranteed by ILOC; verified statements of ILOC renewal or modification; and violation of any rules of the Colorado Public Utilities Commission.

14. Occurrence of any of the events described in Paragraph 13 above shall be cause for Staff to request that the Colorado Public Utilities Commission issue an order to show cause to determine if NationsLine's ILOC is in default, if payment should be made to the payee and disbursed as set forth in Paragraph 11 above, and whether the Colorado Public Utilities Commission should take action against NationsLine's CPCN.

15. NationsLine agrees that it will not discontinue service to customers for any reason unless the Colorado Public Utilities Commission has granted its application to discontinue pursuant to 4 CCR 723-25-7 (Rule 7). For so long as NationsLine is obligated to provide the ILOC, in the event that NationsLine files an application pursuant to Rule 7, NationsLine shall file with the Colorado Public Utilities Commission, and serve a copy on Staff, the following: (a) the number of business and residential lines affected by such discontinuance; (b) a customer list including the name, address and telephone number of each customer; (c) the amount of any refund due to each individual customer for payment of service not received by the customer; and (d) the identity of all underlying providers supporting the goods and/or services affected by such discontinuance.

16. NationsLine expressly acknowledges that, in accordance with Section 40-5-105, C.R.S. (2004), as amended, it cannot sell, assign, or otherwise transfer its Colorado assets that



are used in the provision of regulated telecommunications services, including, without limitation, Billing Account Numbers, customers, Interconnection Agreements, and its CPCN , without first having obtained Colorado Public Utilities Commission approval.

17. NationsLine shall notify Staff of its intent to enter into any marketing, customer service, or customer procurement agreements with any third party(ies) prior to entering into any such agreements, as follows: if the third party is an individual (*i.e.*, natural person) over whom NationsLine exercises substantial oversight, NationsLine shall provide seven (7) days notice; in all other circumstances NationsLine shall provide thirty (30) days notice.

18. NationsLine shall file a report with the Colorado Public Utilities Commission in writing within ten (10) calendar days of any of the following events.

- a. Assessment of civil penalties by any court or regulatory body;
- b. Assessment of criminal penalties by any court or regulatory body;
- c. Injunctive relief awarded by any court or regulatory body;
- d. Any corrective action taken by any court or regulatory body;
- e. Any refund of more than one hundred dollars (\$100) in any individual case, or any refund of two hundred fifty dollars (\$250) or more to any class of customers awarded by any court or regulatory body;
- f. Reparations to any party awarded by any court or regulatory body;
- g. Initiation of a show cause proceeding by any court or regulatory body;
- h. Initiation of disciplinary proceedings by any court or regulatory body, including proceedings to limit or to place restrictions on any authority to operate a CPCN or offer any service;

- i. Refusal to grant authority to operate or provide a service by any court or regulatory body;
- j. Revocation of authority to operate or to provide a service by any court or regulatory body;
- k. Voluntary surrender of any certificate or authority to operate in lieu of any action by a court or regulatory body; or
- l. Any combination of the foregoing sanctions, penalties, corrective actions, or other proceedings.

19. If NationsLine fails to perform any of the obligations set forth in this Stipulation including, but not limited to, failing to obtain and maintain a ILOC according to the terms outlined in this Stipulation and failing to timely report to the Colorado Public Utilities Commission any events set forth in Paragraph 18 above, Staff shall consider NationsLine to have breached this Stipulation. In that event, Staff may request that the Colorado Public Utilities Commission issue an order to show cause to determine whether the Colorado Public Utilities Commission should take action against NationsLine's CPCN.

20. All documents that NationsLine or the bank issuing the letter of credit provide to the Colorado Public Utilities Commission shall reference this docket number, Docket No. 05A-061T.

## GENERAL SETTLEMENT TERMS AND CONDITIONS

21. This Stipulation is made for settlement purposes only. No Party concedes the validity or correctness of any regulatory principle or methodology directly or indirectly incorporated in this Stipulation. Furthermore, this Stipulation does not constitute agreement, by any Party, that any principle or methodology contained within this Stipulation may be applied to any situation other than the above-captioned cases. No precedential effect or other significance, except as may be necessary to enforce this Stipulation or a Commission order concerning the Stipulation, shall attach to any principle or methodology contained in the Stipulation.

22. This Stipulation shall not become effective until the Commission issues a final order approving the Stipulation, which order does not contain any modification of the terms and conditions of this Stipulation that is unacceptable to the Parties hereto. In the event the Commission modifies this Stipulation in a manner unacceptable to either Party, that Party shall have the right to withdraw from this Stipulation and proceed to hearing on some or all of the issues that may be appropriately raised by that Party in this docket under a new procedural schedule. The withdrawing Party shall notify the Commission and the other Party to this Stipulation in writing within ten (10) days of the date of the Commission order that the Party is withdrawing from the Stipulation (Notice). A Party who properly serves a Notice shall have and be entitled to exercise all rights the Party would have had in the absence of the Party's agreeing to this Stipulation.

23. In the event this Stipulation is not approved, or is approved with conditions that are unacceptable to any Party who subsequently withdraws, the negotiations or discussions

undertaken in conjunction with the Stipulation shall not be admissible into evidence in this or any other proceeding. Moreover, in such an event, except as may be specifically provided for herein, neither anything said, admitted or acknowledged in the negotiations leading up to the execution of this Stipulation, nor the settlement terms and conditions contained herein, nor the Stipulation itself may be used in this or any other administrative or court proceeding by any of the Parties hereto, or otherwise.

24. The Parties state that they have reached this Stipulation by means of a negotiated process that is in the public interest, and that the results reflected in this Stipulation are just, reasonable, and in the public interest. Each Party pledges its support of this Stipulation and urges the Commission to approve same, without modification.

25. Except as otherwise specifically agreed in this Stipulation, nothing contained herein shall be deemed as constituting either a settled practice or precedent for the purposes of any other proceeding, and by entering into this Stipulation, no Party shall be deemed to have agreed to any specific principles of ratemaking. The Parties expressly reserve the right to advocate positions different from those stated in this Stipulation in any proceeding other than one necessary to obtain approval of, or to implement, this Stipulation or its terms and conditions. Nothing in this Stipulation shall constitute a waiver by any Party with respect to any matter not specifically addressed in this Stipulation.

26. This Stipulation may be executed in separate counterparts, including facsimile. The counterparts taken together shall constitute the Stipulation and Settlement Agreement.

27. The signatories represent that the signatories to this Stipulation have full authority to bind their respective Parties to the terms of this Stipulation.

DATED this 11 day of May 2005.

**FOR NATIONSLINE COLORADO, INC.**

APPROVED AS TO FORM

By:   
NORM MASON

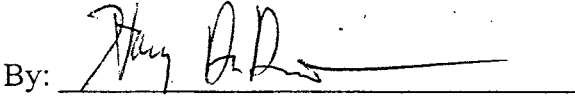
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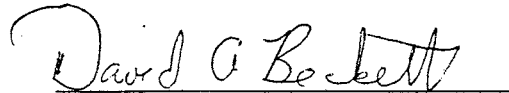
**FOR STAFF OF THE COLORADO  
PUBLIC UTILITIES COMMISSION:**

APPROVED AS TO FORM

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EXHIBIT A

STAFF LETTER OF CREDIT CALCULATION

PAGE 1 OF 1

Estimated Number of Customers: 500  
Average Revenue per customer per month: \$ 25.00 Monthly Revenue per customer

Fixed Utilities Fund (FUF): 1.466% of Intrastate revenues  
911 Fund: \$0.50 per line per month  
Colorado High Cost Support Mechanism (CHCSM): 2% of revenues  
Low Income Fund: \$.12 per line per month  
TRS Relay Fund: \$.06 per line per month  
PUC Administrative Costs- In the event CLEC does not perform customer transition obligations, calculated at \$1.44 per customer.  
Prepayments- assume each customer prepays one month of service(((\$25X1)X500 customers)  
Wholesale Supplier Regulatory Obligation, 2 months of service ((\$25X2)X500 customers)  
Customer deposits- assume 10% of retail customers will need to place a 2 month deposit of \$50

Number of Customers	500	<u>% of Total</u>
Annual Revenues:	\$ 150,000	
FUF	2199	4%
911	3000	6%
CHCSM	3000	6%
Low Income	720	1%
TRS Fund	360	1%
PUC Administrative Costs	721	1%
Customer deposits	2500	5%
Customer Prepayments	12500	25%
Wholesale Supplier Obligation	<u>\$ 25,000</u>	<u>50%</u>
Total Deposit/Letter of Credit Requirement	<u>\$ 50,000</u>	<u>100%</u>

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within STIPULATION AND SETTLEMENT AGREEMENT and JOINT MOTION TO APPROVE STIPULATION AND SETTLEMENT AGREEMENT upon all parties herein by depositing copies of same in the United States mail, first class postage prepaid, or as otherwise indicated, at Denver, Colorado, this 16<sup>th</sup> day of May, 2005, addressed as follows:

Stephen Athanson, General Counsel  
NationsLine Colorado, Inc.  
P.O. Box 11845  
Roanoke, Virginia 24022-1845

**\*\*John Trogonoski**  
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