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May 20, 1996

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FEDERAL COMMUNICATIONS COMMISSION
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VIA HAND-DELIVERY

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (Separate Filing on Rights-of-Way, Dialing Parity and Number Administration)

Dear Mr. Caton:

Enclosed are an original and 16 copies of the Comments of WinStar Communications, Inc. in the above-captioned matter. Also enclosed is a copy to date-stamp and return in the self-addressed, stamped envelope.

Thank you for your attention to this matter.

Sincerely,

Dana Frix

Dana Frix

Counsel for WinStar Communications, Inc.

Enclosures

160684.1

No. of Copies rec'd 0+16
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May 20, 1996

VIA HAND-DELIVERY

Ms. Janice Myles
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

Re: *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (Separate Filing on Rights-of-Way, Dialing Parity and Number Administration)

Dear Ms. Myles:

Please find enclosed one copy of the Comments of WinStar Communications, Inc. in the above-referenced docket. Also enclosed is a diskette in WordPerfect 5.1 format containing the Comments.

Sincerely,

Dana Frix

Dana Frix

Counsel for WinStar Communications, Inc.

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

May 20, 1996

VIA HAND-DELIVERY

Ms. Gloria Shambley
Network Services Division
Common Carrier Bureau
Federal Communications Commission
2000 M Street, N.W., Suite 210
Washington, D.C. 20554

Re: *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (Separate Filing on Rights-of-Way, Dialing Parity and Number Administration)

Dear Ms. Shambley:

Please find enclosed three copies of the Comments of WinStar Communications, Inc. in the above-referenced docket.

Sincerely,

Dana Frix

Counsel for WinStar Communications, Inc.

Enclosures

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MAY 20 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20054

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-98
Local Competition Provisions of the	)	
Telecommunications Act of 1996	)	

COMMENTS OF WINSTAR COMMUNICATIONS, INC. ON ACCESS TO RIGHTS OF WAY, DIALING ISSUES, AND NUMBER ADMINISTRATION

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EXECUTIVE SUMMARY

WinStar's comments in the instant proceeding focus on the three topics designated by the Commission for separate filing: access to rights-of-way; dialing parity; and number administration. WinStar comments are summarized as follows:

Access to Rights-of-Way: Noting the critical importance of access to rights-of-way, WinStar argues in Section I.B that § 251(c)(6) of the Telecommunications Act of 1996 ("1996 Act") grants it the right to place 38 gigahertz transmission equipment on the roofs of incumbent local exchange carrier ("LEC") buildings where it collocates and to utilize associated riser conduit. In Section I.C, WinStar contends that § 224 of the amended Communications Act of 1934 ("Act") entitles it use any rights-of-way, either owned or controlled by utilities, including incumbent LECs. In Section I.D, WinStar discusses the meaning of the term "nondiscriminatory access" in § 224(f)(1) of the Act and concludes that new entrants have a right to the best rates, terms, and conditions currently offered in the marketplace to anyone, including affiliates of incumbent LECs. WinStar explains in Section I.E that reasonable notice of modifications to rights-of-way by owners or controlling entities in § 224(h) is whatever notice that allows new entrants to avoid interference with their networks. Lastly, in Section I.F, WinStar supports offsetting costs of making a particular right-of-way accessible to a new entrant with any additional profits that are generated as a result of modifications.

Dialing Parity: WinStar first emphasizes in Section II.A that dialing parity under the 1996 Act is absolute. There can be no distinction between the number of digits that customers of new entrants and incumbent LECs must dial when placing calls. Second, Section II.B argues that the Commission must create nationwide standards requiring presubscription for local, intraLATA, and interLATA service. WinStar stresses the importance of both interim and permanent number portability solutions and argues that costs of implementing number portability and presubscription should be spread among all carriers according to the number of presubscribed lines that they possess. Third, Section II.C explains that the 1996 Act defines dialing parity to include access to bottleneck functions such as telephone numbers, operator services, directory assistance, and directory listings. WinStar argues that these essential inputs should be made available as soon as possible and priced using agreements between Regional Bell Operating Company affiliates as a proxy-based ceiling. WinStar also supports creating a neutral number administrator.

Number Administration: WinStar believes that the Commission must retain final authority over all policy aspects of number administration. Nonetheless, WinStar does not object to permitting state commissions to implement new area codes.

Before the
Federal Communications Commission
Washington, D.C. 20054

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-98
Local Competition Provisions of the	)	
Telecommunications Act of 1996	)	

COMMENTS OF WINSTAR COMMUNICATIONS, INC. ON ACCESS TO RIGHTS OF WAY, DIALING ISSUES, AND NUMBER ADMINISTRATION

WinStar Communications, Inc. ("WinStar"), by its undersigned counsel and pursuant to Section 1.415 of the Commission's rules, submits these comments in accordance with the Commission's April 19, 1996 Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding. WinStar is a publicly-held company (traded on the NASDAQ) which, among other things, develops, markets, and delivers local telecommunications services in the United States.[1/] The Company, through its operating affiliates, provides facilities-based local telecommunications services on a point-to-point basis using wireless, digital millimeter wave capacity in the

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1/ WinStar is authorized to provide facilities-based telecommunications service in the nation's 43 largest metropolitan statistical areas. WinStar's operating companies have been approved to offer competitive local exchange carrier services in seven states, and applications for such authority are pending in six additional states. In addition, WinStar's affiliates have received authority to operate as competitive access providers in 22 states, and have applications pending in nine other states. A separate WinStar subsidiary provides switched and switchless long distance services on a resale basis.

38 gigahertz ("GHz") band, a configuration referred to by WinStar as Wireless Fiber℠.[2] The passage of the Telecommunications Act of 1996 ("1996 Act" or "Act")[3] should hasten WinStar's ability to provide competitive services — particularly, local exchange services.

On May 16, 1996, WinStar filed substantial comments in this proceeding which described WinStar and its services in detail, and which were designed to assist the Commission in understanding the unique concerns of a fixed point-to-point wireless competitive local exchange carrier ("CLEC"). WinStar will not repeat that information here, but incorporates those comments by reference. As requested by the Commission in its NPRM, comments being filed today address concerns relating to three distinct issues: access to rights of way; dialing parity; and number administration.

I. THE ACT PROVIDES WINSTAR WITH ACCESS TO RIGHTS-OF-WAY AND CONDUIT OWNED OR CONTROLLED BY INCUMBENT LECS (NPRM, ¶¶ 220-25)

A. Access to Rights-of-Way Is Critical for New Entrants

The success of new entrants in penetrating the local exchange market to compete with incumbent LECs will be significantly influenced by their ability to access existing rights-of-way that are either owned or controlled by incumbents. Fixed-point-to-point wireless carriers, like WinStar, will need to place microwave transmission facilities on buildings, poles, and other structures. Traditional wireline carriers will have to lay their fiber optic cable across existing

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[2] WinStar's Wireless Fiber℠ networks are so named because of their ability to duplicate the technical characteristics of fiber optic cable with wireless 38 GHz microwave transmissions.

[3] Telecommunications Act of 1996, Pub. L. No. 104-104, 100 Stat. 56 (1996) ("1996 Act"). Herein, "Act" refers to the Communications Act of 1934, as amended by the 1996 Act.

rights-of-way in order to create more efficient (and, correspondingly, more competitive) cost structures independent of the incumbent LEC. In the absence of a regulatory framework to make the current infrastructure available to new entrants, these beneficial, pro-competitive activities would be stalled — perhaps indefinitely. With good reason, Congress amended the Communications Act of 1934 to provide new entrants nondiscriminatory access to LEC premises and other rights-of-way and to give the Commission a more prominent role in regulating the terms and conditions of such access. In these comments, WinStar urges the Commission to carry out its duties under the Act in a manner that would nurture burgeoning local competition through national standards.

B. WinStar Requires Access to Roofs and Riser Conduit of LEC Buildings Where It Physically or Virtually Collocates (NPRM, ¶¶ 66-73; 155-156)

As its primary comments (filed in this proceeding on May 16, 1996) explained, WinStar's operations call for access to the roofs of incumbent LEC buildings, and associated riser conduit, wherever WinStar physically or virtually collocates. Unlike wireline carriers that use fiber optic cable to link their network and collocation equipment, WinStar will accomplish the same feat with a microwave transmitter mounted on the roof of the LEC building and connected, via riser conduit, to its collocation cage. The transmitter will create the Wireless Fiber℠ link to a line-of-sight receiving dish on another building in the area which will, in turn, send the signal to other line-of-sight receivers in the chain. WinStar will thereby engineer its own wireless transport and local loops.

Section 251(c)(6) entitles WinStar to mount its transmitters on the roofs of buildings owned or controlled by LECs. Section 251(c)(6) imposes on incumbent LECs "[t]he duty to provide,

on rates, terms, and conditions that are just, reasonable, and *nondiscriminatory*, for physical collocation of equipment necessary for interconnection . . . at the premises of the local exchange carrier. . . ." 1996 Act, § 251(c)(6) (emphasis supplied). Congress' use of the word "nondiscriminatory," without more, creates a technology-neutral standard for collocation. Incumbent LECs cannot exclude technologically unique and innovative carriers, like WinStar, based on asserted differences between wireline and wireless networks. Unlike § 202(a) of the Act, which forbids "*unreasonable* discrimination" and, by implication, permits reasonable discrimination, § 251(c)(6) makes no such distinction. Congress intended to outlaw *all* discrimination associated with collocation. Section 251(c)(6) easily accomplishes this task.

The text of the Act explicitly authorizes WinStar to utilize the roof space and riser conduit of LEC buildings for purposes of placement of its transmission equipment. Specifically, § 251(c)(6) states that collocation must be permitted "at the premises of the local exchange carrier. . . ." 1996 Act, § 251(c)(6). It is simply impossible for the Commission's rules logically to construe the term "premises" in a manner that would exclude the roofs of LEC buildings (including any roofs controlled by a LEC) and include unspecified interior portions where collocation cages would be placed.[4/] Obviously, any portion of a LEC building, or its appurtenances, should be considered the premises of the LEC "for physical collocation of equipment necessary for interconnection" with new entrants. 1996 Act, § 251(c)(6).

[4/] Since riser conduit is always within a building, incumbent LECs cannot dispute the right of WinStar to connect its rooftop transmitter and collocation cage through this conduit. Indeed, wireline carriers will most likely run fiber optic cable into the basement of LEC buildings and to their collocation cages also through riser conduit.

Under the 1996 Act, WinStar has a right to more than just nondiscriminatory access — the rates for physical collocation must be "just, reasonable, and nondiscriminatory" as well. 1996 Act, § 251(c)(6). Incumbent LECs cannot charge WinStar more than the actual cost of roof mountings. The fact that incumbent LECs currently charge Commercial Mobile Radio Service ("CMRS") providers many times the actual cost for roof mountings is irrelevant under the 1996 Act. CMRS providers have historically paid extraordinarily high interconnection rates as part of ill-defined state universal service programs because of their complete lack of negotiating power that the 1996 Act intended to remedy. The analogy to rates for CMRS providers is wholly inapposite now that the 1996 Act both provides for collocation at just, reasonable, and nondiscriminatory rates and has convened a Federal-State Joint Board on universal service with the distinct mission of establishing programs that require "an equitable and nondiscriminatory contribution" from "[a]ll providers of telecommunications services." 1996 Act, § 251(c)(6) & 254(b)(5).[5/]

C. The Act Provides New Entrants With Access to Rights-of-Way, Including Roof Rights, Either Owned or Controlled by Incumbents LECs and Other Utilities (NPRM, ¶ 220)

In order to position many of the receiving dishes that compose its wireless network, WinStar requires access to rights-of-way, including roof rights, that incumbent LECs, or other

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[5/] Moreover, in the past, *all* CMRS providers, which as a practical matter were, for the most part, competing with each other, but *not* with incumbent LECs in the provision of basic local exchange telephone service, had to pay exorbitant charges for roof rights. As such, no CMRS provider was disadvantaged vis-a-vis its principal competitors. In the current environment, however, if such exorbitant charges were carried over to wireless CLECs (such as WinStar), they *would* be critically disadvantaged by comparison to *their* principal competitors: incumbent LECs and wireline CLECs.

utilities defined in § 224(a)(1), control and may or may not own. Congress amended Section 224 of the Communications Act in an effort to revamp the law on access to rights-of-way. Section 224(f)(1) now grants new entrants the right to place their facilities on "any pole, duct, conduit, or right-of-way owned or controlled by" a "utility," including incumbent LECs.[6] As with collocation, access by itself is insufficient. New entrants need access at just, reasonable, and nondiscriminatory rates. WinStar urges the Commission to complete its rulemaking under § 224(e)(1) as rapidly as possible, setting such rates according to the formula in § 224(d)(1), as soon as possible. With many business plans already underway, delayed access for new entrants may mean no access at all.

D. New Entrants' Right to "Nondiscriminatory Access" Entitles Them to Lease Rights-of-Way on the Most Favorable Terms Currently Offered by an Incumbent LEC to Any Party, Including Itself (NPRM, ¶ 222)

Nondiscriminatory access to rights-of-way under § 224(f) means that incumbent LECs cannot vary the terms of access with the identity of the requesting carrier. (NPRM at ¶ 222.) Every carrier, regardless of the technology employed, has a right to the best terms currently offered in the market to any other carrier, including affiliates of the incumbent and carriers with whom the incumbent has a contractual relationship. Carriers also have the right to renegotiate the rates of long-term contracts that become discriminatory with the passage of time.

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[6] Section 224 defines a "utility" as "any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and *who owns or controls* poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. (Emphasis supplied.) Although § 224 provides for broader access, WinStar is primarily concerned with access to LEC roofs and conduit and has focused its comments accordingly.

The Act provides only one basis for discriminating among carriers: an electric utility may refuse telecommunications carriers access to rights-of-way if it can demonstrate insufficient capacity for the particular attachment or if it can show that legitimate safety, reliability, and engineering concerns militate against providing access. Act, § 224(f)(2). In granting electric utilities the right to deny applications for access, Congress obligated them to carry the burden with respect to the showings required under § 224(f)(2). (NPRM at ¶ 223.) Congress understood that, unlike new entrants, electric utilities possess the data, information, and expertise regarding their own rights-of-way. The Commission will be better able to render an informed decision if electric utilities have the burden of producing this information and establishing the reasonableness of their position.

To help it administer rights-of-way issues, the Commission should promulgate regulations "to ensure that a utility fairly and reasonably allocates capacity." (NPRM at ¶ 223.) Such regulations would assist and, perhaps, speed negotiations over rights-of-way, alleviating the need for the Commission to intercede and resolve numerous acrimonious disputes.

E. A New Entrant has Reasonable Notice of Pending Modifications to Certain Rights-of-Way Only When It Is Able to Avert Interference with Its Network (NPRM, ¶ 225)

The Commission has asked commenters to address the meaning of the term "reasonable opportunity" in § 224(h) (which provides that an owner of a pole, duct, conduit, or right-of-way shall provide an occupant with written notice and a reasonable opportunity to add to or to modify an existing attachment). Because of the need to avoid unduly disturbing the operations of telecommunications carriers, WinStar proposes defining the term from the perspective of the

particular carrier using a specific right-of-way. WinStar suggests that a carrier receives "reasonable opportunity" to add to or modify its use of a certain right-of-way, that is to be modified or altered by the owner (or controlling entity), only if it is able to prevent its network from being disrupted without undue expense. Such a standard would effectively protect the interests of telecommunications carriers, as Congress intended to do through § 224(h).

WinStar agrees that the Commission should create rules that restrict owners (or controlling entities) of rights-of-way from engaging in "unnecessary or unduly burdensome modifications or specifications." (NPRM at ¶ 225.) Incumbent LECs have strong incentives to generate new costs of doing business for their competitors through pointless modifications of shared rights-of-way. The Commission must check such anticompetitive activity through the rules that arise out of the instant proceeding.

F. In Calculating a Tenant-Carrier's "Proportionate Share of the Costs" of Making a Right-of-Way "Accessible" Under § 224(h), the Commission Must Take into Account Any Additional Profits that the Owner or Controlling Entity Reaps As a Result of the Modifications (NPRM, ¶ 225)

If tenant-carriers are required to pay a proportionate share of the costs under § 224(h) of making an individual right-of-way accessible after modifications, they also must receive a credit for any additional profits that result from the modified right-of-way. The Commission should interpret the term "costs" to encompass only true costs and to exclude investments that later yield more profits. For instance, if the owner or controlling entity enlarges its right-of-way to provide access to the tenant-carrier, that carrier only should pay the proportionate costs of the construction, minus any additional profits that the owner or controlling entity later realizes from

the sale of extra, newly-built space to other carriers. Considerations of equity and fairness demand that profits offset costs in this manner whenever possible.

II. DIALING PARITY(NPRM, ¶¶ 202-219)

A. Dialing Parity Is Absolute: Any Distinction is Discriminatory (NPRM, ¶¶ 202-206; 211)

Section 251(b)(3) of the Act, obligating all local exchange carriers (both incumbent LECs and new entrants) to provide dialing parity to all competitors, is consistent with the Act's twin goals of promoting competition for local telecommunications services and immediately removing impediments to such competition. As noted by the Commission, it does so by "mandating that customers have the freedom to choose among different carriers for different services without the burden of dialing additional access codes or personal identification numbers." (NPRM at ¶ 202.) WinStar emphasizes that absolute parity is essential to its ability to provide competitive local switched services and that *any* distinction between the dialing pattern employed by customers of incumbents and customers of WinStar is, *per se*, illegal discrimination.[7] This is consistent with the context of the Act, which was intended to quickly eliminate barriers to local competition, specifically including dialing barriers. That this was intended is evidenced by the legislative history which provides that, "[i]f requested a local exchange carrier must take *any action* under

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[7] Here, as elsewhere in the Act, discrimination should be defined as where an incumbent LEC provides something to a competitor on terms or conditions that are less favorable than it provides to itself or its operating affiliates. *See* NPRM at ¶ 214 (defining "nondiscriminatory access" to telephone numbers and other services as access similar to that which an incumbent LEC provides to itself).

its control to provide interim or final number portability as soon as it is technically feasible."[8] (Emphasis supplied.)

WinStar concurs in the Commission's tentative conclusion that § 251(b)(3) requires dialing parity for all services (regardless of the jurisdictional nature of a call) and, thus, applies to all calls including local, toll, intrastate, interstate, and international. (NPRM at ¶ 206.) Not only is there no explicit jurisdictional limitation in the 1996 Act,[9] but to imply one is contrary to the 1996 Act's goal of fostering immediate competition for both local and toll switched services. Consumers do not distinguish between intrastate and interstate service when they dial a call. Any distinction between the dialing pattern available when a consumer employs WinStar's services and the dialing pattern available from the incumbent will discourage open and vigorous competition by unreasonably favoring the incumbent LEC.

The Commission has tentatively concluded that, pursuant to § 251(b)(3), "a LEC is required to permit . . . customers within a defined local calling area to dial the same number of digits to make a local telephone call, notwithstanding the identity of a customer's or the called party's local telephone service provider." (NPRM at ¶211.)[10] WinStar agrees with the general premise that customers should be able to dial the same number of digits to make a call regardless

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[8] H.R. 104-204, 104th Cong., 2d Sess., at 118 (1996).

[9] Section 3(15), which defines "dialing parity" by stating that "*any* person [shall be] able to provide telecommunications services in such a manner that customers shall have the ability to route automatically, without the use of *any* access code, their telecommunications to the . . . provider of the customer's designation. . . ." (Emphasis supplied.)

[10] The Commission emphasizes that this is the 'best" way to facilitate local competition. NPRM at ¶ 211. WinStar believes that it is the "only" way to facilitate competition.

of the identity of the carrier; however, it is concerned about Congress's use of the language "within a defined local calling area." One of the fundamental bases upon which new entrants will be competing with incumbent LECs is to provide local calling areas that better respond to the needs of customers. Thus, in any given metropolitan area, WinStar may want to employ a local calling area that is larger (or smaller, or simply different) than the incumbent offers. The Commission should proceed carefully to ensure that it does not inadvertently limit carriers from experimenting with local calling areas. For example, in New York, NYNEX terminates traffic to CLECs within the downstate LATA at a single rate, regardless of where the call originated within the LATA. This provides CLECs with the necessary ability to describe (and price) their own local calling areas — independent of the pricing and geographic structure employed by NYNEX. Any national principles arising from this proceeding should be modeled upon this example.

B. The Commission Should Adopt Nationwide Dialing Parity Standards that Mandate Immediate Dialing Parity (NPRM, ¶¶ 207-210; 212; 219)

The Commission has requested comment on alternative methods for implementing dialing parity. (NPRM at ¶209.) Dialing parity *must* provide end users the ability to determine (or "presubscribe") their preferred carrier for local service, intraLATA toll, and interLATA toll.[11]

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[11] The NPRM defines "presubscription" as the method for achieving dialing parity for long distance service, and makes a distinction that presubscription "does not represent the method by which carriers would accomplish local dialing parity" (because this will be accomplished through unbundling, interconnection, and number portability). NPRM at n.284. Although this may be technically accurate, for public policy purposes, presubscription should be viewed from the end-user's perspective, not as a technical methodology. Thus, an end-user "presubscribes" to local service in the same way as he "presubscribes" to toll service: by calling a carrier and expressing (continued...)

Also, it is imperative that the Commission establish minimum nationwide standards that provide for the immediate adoption of dialing parity for local services. This standard should provide that dialing parity for local services (via remote call forwarding or similar methodology) shall be available immediately, without exception.

On a closely related matter, the precise form of interim number portability can be left to the state public service commissions, provided that the form of interim number portability is technically and economically efficient. However, the Commission should initiate a proceeding with the express goal of adopting a permanent number portability methodology within nine months.

Although WinStar recognizes that § 271(e)(2) provides that a state may not require a RBOC to implement intraLATA toll dialing parity until either (i) 36 months after adoption of the Act or (ii) before the RBOC has been granted interLATA authority within the state, WinStar urges the Commission to rule that the RBOCs' voluntary adoption of intraLATA toll dialing parity at the earliest technical opportunity is consistent with the Act's goal of fostering competition for local services.

Lastly, over the past two years, incumbent LECs have sought to recover future costs associated with dialing parity (in particular, permanent number portability) entirely from new entrants, despite the fact that (as Congress recently has determined) dialing parity benefits the public generally. Given the experience of new entrants over the last two years, in attempting to enter into meaningful interconnection agreements that enable them to provide service efficiently

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11/ (...continued)
his preference for one carrier over another.

and cost-effectively, it is imperative that the Commission adopt nationwide rules that prevent incumbent LECs from shifting the full weight of number portability costs to new entrants. Instead, the Commission should adopt nationwide pricing principles that assess costs based upon a carrier's number of presubscribed lines. This should apply to any and all costs for both interim and permanent number portability.

C. Nondiscriminatory Access to Bottleneck Functions Such as Telephone Numbers, Directory Listings, and Directory Assistance, Is Mandated By the Act and is in the Public Interest (NPRM, ¶¶ 214-217)

One of the fundamental obligations under the Act is the duty for LECs to provide "nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings" to CLECs. 1996 Act, § 251(b)(3). New entrants such as WinStar cannot provide service without telephone numbers and nondiscriminatory access to directory assistance and directory listings. Accordingly, consistent with the fundamental intention of the Act to make available to all people "rapid, efficient, Nation-wide . . . communication service with adequate facilities at reasonable charges" (47 U.S.C. § 151), the Commission has concluded that "competing telecommunications providers must be provided access to telephone numbers in the same manner that such numbers are provided to the incumbent LECs" (NPRM at ¶215) and that "all telecommunications service providers' customers must be able to access each LEC's directory assistance service and obtain a directory listing in the same manner. . . ." (NPRM at ¶ 217.)

WinStar urges the Commission to proceed expeditiously to resolve all issues necessary in order to turn number administration over to a neutral, third-party administrator as soon as possible. So long as CLECs' chief competitors (incumbent LECs) control numbering resources,

conflicts will inevitably arise, and the only certain way to eliminate them is to resolve the structural source of the conflict. With regard to directory assistance and listings, it is clear that these are bottleneck essential facilities. The Commission should issue minimum national standards that obligate LECs (which control directory assistance and listing services) to make them available to CLECs at cost-based rates. As WinStar noted in its comments of May 16, 1996 in this proceeding (at pages 28-41), the Commission should establish national pricing standards for essential network elements. Although WinStar will not repeat that argument here in detail, network elements should be cost-based and should be capped at total service, long-run incremental cost ("TSLRIC"). However, because regulatory evaluation of TSLRIC cost studies is a time-consuming process, to prevent anticompetitive abuses (in the interim), the Commission should adopt proxy-based cost ceilings, and the optimum proxy should be the rates used in existing agreements between RBOC affiliates serving neighboring states (*e.g.*, Bell Atlantic-Maryland and Bell Atlantic-Virginia).

III. NUMBER ADMINISTRATION (NPRM, ¶¶ 250-261)

WinStar agrees that the Commission "should retain its authority to set policy with respect to all facets of numbering administration." (NPRM at ¶ 254.) As the Commission's *Ameritech Order*[12] demonstrates, incumbent LECs will seek to game the regulatory process,

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[12] *Proposed 708 Relief Plan and 630 Number Plan Area Code by Ameritech - Illinois, Declaratory Ruling and Order*, 10 FCC Rcd 4596 (1995) (*recon. pending*). In this case, Ameritech proposed to adopt a wireless-only overlay numbering plan. The Commission concluded that the plan was unreasonable discriminatory and anticompetitive because (among other things) it unduly favored one technology over another.

utilizing every option at their disposal including misusing numbering issues to disadvantage certain carriers or classes of carriers. At the same time, WinStar supports the Commission's tentative determination to delegate matters involving the implementation of new area codes (such as determination of area code boundaries) to the state regulatory commissions, so long as they act consistent with the Commission's number administration guidelines. (NPRM at ¶ 257.) The states have traditionally exercised care in the establishment of new area codes and, in light of the specific direction in the *Ameritech Order*, WinStar is confident that they will continue to do so in a manner that does not discriminate against carriers because of the technology employed to provide service. Thus, for example, WinStar must be treated similarly with all other carriers, notwithstanding its use of 38 GHz microwave transmission facilities. WinStar also agrees that the Act has eliminated any question regarding the Commission's exclusive jurisdiction over numbering issues; hence, should incumbent LECs or states initiate actions inconsistent with sound numbering policy, WinStar expects that the Commission would take swift and immediate action.

CONCLUSION

For the foregoing reasons, WinStar respectfully requests that the Commission adopt rules consistent with the principles discussed herein.

Respectfully submitted,

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Dated: May 20, 1996