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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Federal-State Joint Board on)
Universal Service)

CC Docket No. 96-45
DA 96-1891

COMMENTS OF
WINSTAR COMMUNICATIONS, INC.

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WINSTAR COMMUNICATIONS, INC.**

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WINSTAR COMMUNICATIONS, INC.**

INTRODUCTION AND SUMMARY

WinStar Communications, Inc. ("WinStar"), by its undersigned counsel and pursuant to the Commission's rules, submits these comments in accordance with the Commission request for comments on the Joint Board's Recommended Decision 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

^{1/} WinStar is authorized to provide facilities-based telecommunications service in the 43 largest metropolitan statistical areas. WinStar's operating companies have been approved to offer competitive local exchange carrier services in 14 states, and applications for such authority are pending in eight additional jurisdictions. In addition, WinStar's affiliates have received authority to operate as competitive access providers in 29 states, and have applications pending in seven other jurisdictions. A separate WinStar subsidiary provides switched and switchless long distance services on a resale basis. Winstar has initiated switched local exchange service on a facilities basis in New York and currently is in the process of completing switch installation in five additional jurisdictions.

operating affiliates, provides facilities-based local telecommunications services on a point-to-point basis using wireless, digital millimeter wave capacity in the 38 gigahertz (“GHz”) band, a configuration referred to by WinStar as Wireless FiberSM.^{2/} The passage of the Telecommunications Act of 1996^{3/} should hasten WinStar’s ability to provide competitive services — particularly, local exchange services.

Winstar’s comments focus on the unique impact of the Joint Board’s Recommended Decision on Winstar, particularly by virtue of its technology and ability to provide service to schools and libraries and low income customers on a far more cost- and time- effective basis than carriers that use a wireline transmission medium, such as fiber optic. In particular, Winstar offers comments in the following areas:

- ▶ **COMPETITORS SHOULD HAVE EQUAL ACCESS TO SUBSIDIES FOR SCHOOLS AND LIBRARIES.** Any carrier that provides subsidized services to schools or libraries must be eligible for any universal service subsidies associated with those services. The Joint Board’s Recommended Decision should be clarified to indicate that the eligibility requirements of §214(e) apply only to support for low income residential customers and service to high-cost areas and do not restrict

^{2/} WinStar’s Wireless FiberSM 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).

eligibility for the universal service support for designed service to schools, libraries or health care providers.

- ▶ **COMPETITORS SHOULD HAVE UNENCUMBERED ACCESS TO SUBSIDIZED INSIDE WIRING.** Carriers that provide subsidized services to schools or libraries should have access to inside wiring and associated conduit. If a school or library solicits bids for discounted service, it should not be allowed to restrict access or charge for use of inside wiring within its control. Owners of existing inside wiring (e.g., the telephone company that installed the inside wiring) may not restrict or prohibit the use of that wiring to provide subsidized services. If tariffed rates apply to the use of existing inside wiring (such as is the case in New York), such tariffed offerings shall be made available at the universal service discounted rates (i.e., 20-90% discount).
- ▶ **RFPs SHOULD BE UNBUNDLED TO MAXIMIZE COMPETITION FOR THE PROVISION OF SUBSIDIZED SERVICES.** When schools or libraries submit a RFP for subsidized services they should unbundle the RFP into logical components (e.g., inside wiring, building connections, etc.) so that competitors need not provide all of the elements of the RFP. Such an unbundling would maximize the number of competitors who could respond to RFPs and thereby maximize competition for the provision of supported services.

- ▶ **CERTIFICATION SHOULD NOT BE REQUIRED OF CARRIERS THAT RESPOND TO A RFP FROM SCHOOLS AND LIBRARIES.** Carriers that respond to a RFP from schools and libraries should not be required to certify that the price they offered is the lowest price available for similarly situated customers. Competition associated with the bidding process will ensure that prices are the lowest available.

- ▶ **ELIGIBILITY FOR LOW INCOME/HIGH-COST SUBSIDIES SHOULD NOT REQUIRE CARRIERS TO OFFER SERVICE WHERE IT IS TECHNICALLY INFEASIBLE.** Carriers that serve low income customers or customers who live in high-cost areas should not be required to hold themselves out to provide service or extend facilities to customers or areas where it is technically infeasible in order to qualify for universal service credits. For example, Winstar can provide service to large numbers of low income customers who live in central city multi-tenant dwelling units within a line-of-sight of its facilities, but should not be expected to offer service to all low-income customers in a given central city area who cannot be reached by Winstar's 38 GHz technology. Requiring Winstar to offer service to customers who are not within its technically feasible service territory violates principles of competitive neutrality by favoring the landline carriers, most particularly the incumbent. Such a result may, as a practical matter, effectively result in a sole source provider: the incumbent. At the same time, it would

eliminate, as a practical matter, the positive effects of competition for low income customers.

I. COMPETITORS SHOULD HAVE EQUAL ACCESS TO SUBSIDIES FOR SCHOOLS AND LIBRARIES

Section IV of the Joint Board's Recommended Decision describes the carriers eligible for universal service support. In particular, it interprets §254(e) which states that:

... only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific Federal universal service support. A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

In turn, the Joint Board interprets §214(e) to define eligible telecommunications carriers as carriers that "(1) offer all of the services that are supported by the federal universal service support mechanism; (2) offer such services using its own facilities or a combination of its own facilities and resale of another carrier's service; and, (3) advertise the availability and charges for such services."^{4/} The Joint Board does not indicate whether a carrier that provides supported services to designated schools, libraries and health care providers must conform with the definition of an eligible telecommunications carrier.

^{4/} Recommended Decision at ¶155.

The statutory provisions (§254(h)) that describe universal service support for service to schools, libraries and health care providers do not refer to an eligible telecommunications carrier, but rather, more generically, to “a telecommunications carrier providing service”^{5/} and “all telecommunications carriers serving a geographic area”^{6/} as the carrier eligible for universal service support for providing service to schools, libraries and health care providers. Thus, by distinguishing between eligible telecommunications carriers and all telecommunications carriers that provide supported services to schools, libraries and health care providers, the Telecommunications Act does not require that carriers that provide supported services to schools, libraries and health care providers also meet the requirements of an “eligible telecommunications carrier” under §214(e).

As a matter of policy, it would be inappropriate to extend the general universal service obligations of an eligible telecommunications carrier to those who provide specialized services to schools, libraries and health care providers. Clearly, the intention of Congress was to encourage the deployment of advanced services to schools, libraries and health care providers. Imposing extraneous universal service obligations on carriers that could otherwise meet the needs of schools, libraries and health care providers is most cost effectively directly contrary to the statutory intent.

^{5/} 47 U.S.C. §254(h)(1)(A) referring to service to health care providers.

^{6/} 47 U.S.C. §254(h)(1)(B) referring to service to schools and libraries.

II. COMPETITORS SHOULD HAVE UNENCUMBERED ACCESS TO SUBSIDIZED INSIDE WIRING

The Joint Board's Recommended Decision extends universal service subsidies to include all telecommunications services, Internet access and internal connections for schools and libraries. Internal connections are defined to include traditional inside wiring, routers, hubs, network file servers, and wireless LANs, but exclude personal computers.^{7/} If inside wiring is included among the services subsidized by universal service funds, competitive access to that wiring should be unencumbered. Certainly, schools, libraries and health care providers that receive subsidized services should not be allowed to use their position as building owners and managers to restrict access to or charge competitors for access to or use of their inside wiring to provide subsidized services. The Joint Board's Recommended Decision should be amended to restrict schools, libraries or health care providers that seek subsidized services from encumbering in any way competitive access to or use of building inside wiring controlled or owned by such schools, libraries or health care providers.

In instances where an entity other than the schools, libraries or health care providers owns the inside wiring, the Commission should prohibit such entities from restricting access to or use of inside wiring to provide the subsidized services. Two circumstances should be distinguished:

^{7/} Recommended Decision at ¶¶ 458-465, 473-484.

▶ ***Installation of Inside Wiring is Subsidized by Universal Service Funds.***

Clearly, in instances where the installation of inside wiring is subsidized by universal service funds, the Commission can and should condition receipt of such subsidies on a requirement that the installer/owner not restrict subsequent use of the inside wiring to provide supported services. For example, if NYNEX received universal service funds that subsidized its installation of inside wiring at an eligible school, NYNEX should not be allowed use its ownership of the inside wiring it installed to prevent the school from choosing someone else to provide its telecommunications services or its Internet services. Likewise, if a school initially uses NYNEX to provide both inside wiring and telecommunications services, but subsequently decides to change service providers, NYNEX should not be allowed to restrict access to or use of its inside wiring by a competitor.

▶ ***Installation of Inside Wiring was not Subsidized by Universal Service***

Funds. In many instances, installation of inside wiring in schools, libraries and health care facilities was not subsidized by universal service funds. The Commission's rules recognize that the building owner controls inside wiring within the demarcation point even though legal ownership of inside wiring may not rest with the building owner.^{8/} In some instances, telecommunications

^{8/} See generally, In the Matter of Detariffing the Installation and Maintenance of Inside Wiring, Memorandum Opinion and Order, CC Docket 79-105, 1 FCC Rcd 1190 (1986).

companies have intrastate tariffs governing inside wiring. The Joint Board's Recommended Decision should be amended to prohibit inside wiring owners from using their control over inside wiring to prevent competitors from providing subsidized services to schools, libraries and health care providers. If a telephone company has a tariff for inside wiring, it should receive compensation for use or transfer of the inside wiring at the 20-90% discounted rates recommended by the Joint Board for support of schools and libraries. Certainly, if the owner of inside wiring does not now charge for the use of that wiring, it should not be allowed to restrict access to that wiring or begin charging for its use if a school, library or health care provider picks a competitor to provide telecommunications services.

III. RFPs SHOULD BE UNBUNDLED TO MAXIMIZE COMPETITION FOR THE PROVISION OF SUBSIDIZED SERVICES

The Joint Board's Recommended Decision envisions a RFP process where schools and libraries submit an RFP to the universal service administrator that details their telecommunications needs. The services included in the RFP would be eligible for the universal service subsidy.^{9/}

^{9/} Recommended Decision at ¶¶ 535-573.

The Joint Board's Recommended Decision should be amended to require that schools and libraries that submit such a RFP must unbundle the RFP into logical subcomponents (e.g., inside wiring vs. transport to the demarcation point) to maximize the ability of carriers to provide discrete portions of the service. Said differently, it would not be competitively neutral if the RFP's were "all or nothing" RFPs that required carriers to fulfill the entire range of services to qualify for universal service support. For example, new entrants might be able to provide the telecommunications services needed by a particular school, but might not have the expertise or resources to provide the inside wiring or routers that might be part of a school's RFP. Requiring that a firm provide all of the components of a school or library's RFP would limit bids to only the largest firms, and in some instances, only to the incumbent. Thus, absent an unbundling requirement, the Joint Board's Recommended Decision would not be competitive neutral as it would effectively restrict universal service subsidies for schools and libraries to a small group of the largest firms.

IV. CERTIFICATION SHOULD NOT BE REQUIRED OF CARRIERS THAT RESPOND TO A RFP FROM SCHOOLS AND LIBRARIES

The Joint Board's Recommended Decision requires that carriers that respond to a RFP certify that the price they offer to schools and libraries in response to a RFP is

the lowest rate charged to similarly situated customers.^{10/} If there is competition in the provision of services to schools and libraries -- which would be the case if more than one carrier responds to the RFP -- the certification requirement is redundant and unnecessary. The Commission should rely on competition rather than an administrative requirement to ensure that the prices offered by competitors are the lowest available prices. A carrier that does not offer its lowest available price does so at the risk of losing the bid to a competing carrier. Thus, the market creates powerful economic incentives for carriers to respond to RFPs with their lowest price. In situations where more than one carrier responds to a RFP, the responding carriers should not have to certify that the price they offer is the lowest available price.

If the Commission adopts the Joint Board's recommendation,^{11/} it risks becoming mired in complaints that the prices are not low enough. That would entail that it compare the package of services offered in response to a school or library's RFP and the package of services that a carrier might offer to other customers. Since the Commission earlier decided to forebear from requiring tariffs from non-dominant interexchange carriers,^{12/} it is not clear how the Commission could perform the

^{10/} Recommended Decision at ¶¶ 540-546.

^{11/} Recommended Decision at ¶ 541.

^{12/} Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket 96-61 (Oct. 29, 1996).

comparison envisioned in the Joint-Board's Recommended Decision in the first instance. The Commission decided to eliminate tariff filing requirements for non-dominant interexchange carriers, in part, because it concluded that non-dominant carriers could not control the market price and set prices at exorbitant levels.^{13/} It is illogical and inconsistent with that reasoning to require that non-dominant carriers certify that the prices they offer to schools and libraries are the lowest available prices. At a minimum, to be consistent with the logic of the Commission's detariffing for non-dominant interexchange carriers, the Commission should eliminate the certification requirement for non-dominant carriers.

V. ELIGIBILITY FOR LOW INCOME/HIGH-COST SUBSIDIES SHOULD NOT REQUIRE CARRIERS TO OFFER SERVICE WHERE IT IS TECHNICALLY INFEASIBLE

The Joint Board's Recommended Decision conditions eligibility for low income and high-cost subsidies on a requirement that carriers provide service to all low income customers and high costs areas within its certificated service area.^{14/} The Joint Board's Recommended Decision should be amended to recognize that extending service to all low income customers or high-cost areas may, as a practical matter, be technically

^{13/} Id. at ¶¶ 36-43.

^{14/} Recommended Decision at ¶¶ 172-178.

infeasible, and in such instances, service to all supported customers should not be a prerequisite to receiving universal service funds.

For example, in any central urban area, Winstar's wireless network can reach and serve many low income customers who live in multi-tenant dwelling units within a line-of-sight of Winstar's facilities. By virtue of Winstar's 38 GHz technology, Winstar can quickly install circuits to such customers in a fraction of the time and at a fraction of the cost of landline carriers. However, there are many other low income customers whose access to Winstar's network is blocked by buildings or other obstructions. If Winstar offers to serve those customers where it is technically feasible given its network, it should not be deemed ineligible for universal service support simply because it does not offer service to every low income customer in its certificated area. To do so will guarantee that thousands, and possibly millions, of low income residential customers that could potentially reap the benefits of innovative technologies will be denied those benefits contrary to the intent of the Telecommunications Act. Denying Winstar with access to universal service funds for the low income customers or high cost areas it serves within its certificated area would not be competitive neutral, but would obviously be skewed in favor the incumbent carrier's landline network.

VI. CONCLUSIONS

For the reasons discussed above, and in the manner discussed above, Winstar recommends that the Commission modify the Joint-Board's Recommended Decision to

provide equal access to universal service support to all carriers that provide supported services to schools, libraries, health care providers, low income customers and high-cost areas.

Respectfully submitted



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Dated: December 19, 1996

ATTACHMENT 1
STATUS OF TELECOMMUNICATIONS MODERNIZATION PLANS

STATE TELECOMMUNICATIONS MODERNIZATION PLANS
STATUS AS OF SEPTEMBER 12, 1996

State	Status	Approval Date
Alabama	• Borrower-developed Plan	April 11, 1996
Alaska	• State-developed Plan	December 7, 1995
Arizona	• Borrower-developed Plan	May 3, 1996
Arkansas	• Borrower-developed Plan	July 12, 1996
California	• Borrower-developed Plan	March 15, 1996
Colorado	• Borrower-developed Plan submitted 8/13/96	
Florida	• Borrower-developed Plan	June 7, 1996
Georgia	• Borrower-developed Plan	May 3, 1996
Guam	• State-developed Plan for RUS borrowers	January 18, 1996
Hawaii	• State-developed Plan for RUS borrowers	February 13, 1996
Idaho	• State-developed Plan for RUS borrowers	February 14, 1996
Illinois	• Borrower-developed Plan	July 9, 1996
Indiana	• Borrower-developed Plan	March 1, 1996
Iowa	• Borrower-developed Plan	March 1, 1996
Kansas	• Borrower-developed Plan	February 14, 1996
Kentucky	• Borrower-developed Plan	March 18, 1996
Louisiana	• Borrower-developed Plan	March 18, 1996
Maine	• Borrower-developed Plan • Borrower-developed Plan • Borrower-developed Plan • Borrower-developed Plan	
Maryland	• Borrower-developed Plan	
Massachusetts		
Michigan	• State-developed Plan for RUS borrowers	January 25, 1996
Minnesota	• Borrower-developed Plan	February 22, 1996
Mississippi	• Borrower-developed Plan	April 11, 1996
Missouri	• Borrower-developed Plan	May 30, 1996
Montana	• Borrower-developed Plan	April 19, 1996
Nebraska	• Borrower-developed Plan • Borrower-developed Plan	
Nevada		
New Hampshire	• Borrower-developed Plan	April 8, 1996
New Jersey		
New Mexico	• Borrower-developed Plan	February 14, 1996
New York	• Borrower-developed Plan	February 14, 1996
North Carolina	• Borrower-developed Plan • Borrower-developed Plan • Borrower-developed Plan • Borrower-developed Plan • Borrower-developed Plan	
North Dakota	• Borrower-developed Plan	February 27, 1996

Northern Mariana Islands		
Ohio	• Borrower-developed Plan	March 15, 1996
Oklahoma	• State-developed Plan for RUS Borrowers	February 13, 1996
Oregon	• Borrower-developed Plan	February 14, 1996
Pennsylvania	• State-developed Plan for RUS borrowers	February 9, 1996
Puerto Rico		
South Carolina	• Borrower-developed Plan	May 23, 1996
South Dakota	• Borrower-developed Plan	February 14, 1996
Tennessee	• State-developed Plan for RUS borrowers	February 13, 1996
Texas	• Borrower-developed Plan	March 18, 1996
Utah		
Vermont	• State-developed Plan for RUS Borrowers	February 14, 1996
Virginia	• Borrower-developed Plan	March 25, 1996
Virgin Islands	• Borrower-developed Plan	July 17, 1996
Washington		
West Virginia		
Wisconsin	• Borrower-developed Plan	March 29, 1996
Wyoming	• Borrower-developed Plan	February 29, 1996

Note: All approved state-developed Plans were submitted on or before February 13, 1996, the date when state's eligibility to submit Modernization Plans expired.

MODERNIZATION PLANS AS OF SEPTEMBER 12, 1996

51 POSSIBLE

38 APPROVED

9 Approved State-developed Plans

Alaska
Idaho
Pennsylvania

Guam
Michigan
Tennessee

Hawaii
Oklahoma
Vermont

29 Approved Borrower-developed Plans

Alabama
California
Illinois
Kansas
Minnesota
Montana
New York
Oregon
Texas
Wisconsin

Arkansas
Florida
Indiana
Kentucky
Mississippi
New Hampshire
North Dakota
South Carolina
Virginia
Wyoming

Arizona
Georgia
Iowa
Louisiana
Missouri
New Mexico
Ohio
South Dakota
Virgin Islands

6 Borrower Group Plans in progress

Colorado
North Carolina

Maine
Washington

Maryland
West Virginia

7 Borrower groups with no written action

Massachusetts
New Jersey
Utah

Nebraska
Northern Mariana Islands

Nevada
Puerto Rico

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of December 1996, copies of the foregoing COMMENTS OF WINSTAR COMMUNICATIONS, INC., CC Docket No.96-45 were sent via Messenger** or via First-Class Mail, U.S. postage prepaid, to the persons on the attached service list.



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