

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Subscriber Carrier)
Selection Changes Provisions of the)
Telecommunications Act of 1996)
)
Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)

CC Docket No. 94-129

**COMMENTS
OF
WINSTAR COMMUNICATIONS, INC.**

Pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.415 (1996), WinStar Communications, Inc. ("WinStar") hereby submits these comments on the Further Notice of Proposed Rule Making ("FNPRM") released in the above-captioned proceeding.¹ The FCC proposes to modify its rules to implement Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and expand the applicability of its verification rules contained in C.F.R. Sections 64.1100 and 64.1150 to all telecommunications carriers. WinStar supports the FCC's efforts to create a balance between the protection of consumers and the promotion of competition in the telecommunications industry.

¹ Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, CC Docket No. 94-129, 62 Fed. Reg. 43493 (August 14, 1997).

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Statement of Interest

WinStar is a publicly traded company whose stock is traded over the NASDAQ market system (symbol WCII). WinStar is a major license holder in the 38.6-40.0 GHz band (the “38 GHz band”). It is utilizing this spectrum asset to build wireless local telephone networks for the transmission of voice, data and video traffic throughout the United States. Over the past three years, WinStar has secured in excess of \$700 million in funding for its network buildout. WinStar is the largest holder of 38 GHz spectrum in the country, with licenses in forty-eight of the top fifty most populated metropolitan statistical areas in the United States.²

WinStar affiliates are authorized to provide competitive local exchange carrier (“CLEC”) service, on both a facilities and resale basis, in twenty-six jurisdictions.³ WinStar already has initiated commercial switched service as a wireless CLEC in New York, Chicago, Boston, Los Angeles and San Diego. It expects to be operating switched CLEC services in at least seven other major markets by the end of 1997. As a wireless CLEC, WinStar seeks to provide a single source for local and long distance telecommunications services to all classes of customers with quality and pricing levels comparable to those achieved by larger communications users.

WinStar also has received authority to operate as a competitive access provider

² WinStar will have licenses in all of the top fifty markets upon completion of pending acquisitions, each of which is subject to FCC approval.

³ California, Colorado, Connecticut, Washington, D.C., Florida, Georgia, Illinois, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Montana (resale only), New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington and Wisconsin.

(“CAP”) in thirty-four jurisdictions⁴ and provides its services through its Wireless FiberSM networks. 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. These high-speed communications links have broadband characteristics, allowing for digital voice, data and video transmissions, and are engineered to have a reliability of 99.999 percent.

WinStar affiliates also are authorized to provide resold long distance services on an interstate basis throughout the United States and on an intrastate basis in forty-seven states to commercial and residential subscribers.

As detailed above, WinStar provides local and long distance telecommunications services throughout the United States. WinStar has adopted a zero-tolerance policy concerning the unauthorized switching of customers. WinStar thus has a direct interest in the FCC’s consideration of its policies and rules regarding subscriber choice of telecommunications carriers.

WinStar’s Comments

1. Standard Industry Language for Letters of Agency

WinStar believes that the adoption of standard language for Letters of Agency (“LOAs”) would minimize consumer confusion in the ordering of telecommunications services and would decrease the likelihood that LOAs would be employed in misleading or

⁴ Arkansas, California, Colorado, Connecticut, Washington, D.C., Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington and Wisconsin.

improper marketing schemes. The use of standardized LOAs throughout the industry would reduce opportunities for confusion and expand telecommunications customers' understanding and awareness of the circumstances and language which would cause their telecommunications service to be switched to another carrier. Such standardization also would improve telecommunications carriers' ability to recognize bona fide requests for changes in service. Further, an approved uniform LOA would provide a level of insurance for telecommunications providers as there would be no question concerning the acceptability of language contained in an LOA.

2. Uniform Confirmation / Verification Standards

WinStar urges the FCC to adopt minimum confirmation requirements of orders for the conversion of telecommunications services. The use of standard questions in the confirmation of service orders would reduce the risk of unauthorized conversion, especially during the sale of commercial accounts. When a carrier takes an order from a person who claims to be the authorized telecommunications buyer at a company, another party from the company might allege that the first person was not authorized to change the service. The proper use of a uniform set of inquiries to verify a sale, in conjunction with the use of an approved LOA, should entitle a carrier to the presumption that the carrier had not committed an unauthorized conversion.

3. Safeguards Against Anti-competitive Behavior by ILECs

Legislators and consumers have expressed concern regarding the slow speed in which competition is occurring in the local exchange market. Thus far, incumbent local exchange carriers ("ILECs") have been unreliable partners in opening the local loop to competition. WinStar believes that there are an abundance of obstacles inherent to the

process of creating a competitive system without the addition of deliberate roadblocks by the ILECs.

In the current telecommunications environment, ILECs are in a situation in which they may take advantage of their dominant market position (as virtual monopolies) when executing preferred carrier (“PC”) changes. An ILEC performing PC changes on behalf of a CLEC has at its disposal information which may result in the loss of business for the ILEC.⁵ Access to this data allows the ILEC to engage in anti-competitive behavior.

WinStar recommends that the FCC prohibit ILECs from employing information gained from competitors’ telecommunications service change orders to induce customers to remain on the ILECs’ service.

WinStar has on several occasions encountered instances where privileged PC information was misappropriated by divisions of an ILEC which are non-essential to PC change processing. In one such instance in Georgia, subsequent to WinStar submitting an order for conversion of a customer’s local service to the ILEC (in this case the order was for resale of the ILEC’s service), an account representative from the ILEC visited the customer’s place of business in an attempt to convince the customer to return to the ILEC’s service. The ILEC account executive advised the customer that it should not change carriers because it would receive lower priority from the ILEC in terms of service repair and maintenance. Several WinStar customers in California have reported that they have been contacted by the ILEC (their previous local service provider) after the ILEC had received a service conversion order from WinStar. The customers commented that this

⁵ Once ILECs receive §271 authority to provide long distance service, this problem will expand to interexchange carrier (“IXC”) conversions.

was strangely coincidental, as they had not been contacted by the ILEC since first initiating service with them. As these examples demonstrate, anti-competitive behavior and misappropriation of information can result from access to information contained in customer change orders, hindering competition in the local exchange marketplace. WinStar urges the Commission to adopt rules prohibiting ILECs from transferring customer account change information to its marketing and sales force for use in attempting to win customers back.

Another competitive disadvantage facing WinStar and other CLECs is that ILECs may unjustly delay the conversion of customers switching away from the ILEC, thereby reducing WinStar's service commitments to its subscribers. WinStar has experienced many circumstances of this conduct by the ILECs. In Illinois, WinStar submitted a customer change order to the ILEC which the ILEC rejected six times in three weeks for vague, unsubstantiated reasons. At the end of the three week period, the customer canceled its order with WinStar because an ILEC account executive had contacted the customer and offered to match WinStar's pricing. A customer in California during the conversion of its service experienced service outages on no fewer than five occasions. While ILEC representatives were on site correcting the service problems, the customer was asked if it was ready to return to the ILEC's service. WinStar urges the Commission to mandate a standard time interval for conversion of customer accounts by the ILECs.

WinStar advocates that PC freezes should be affirmatively chosen by consumers under a standardized process. ILECs should not be permitted to usurp the right of a consumer's PC choice. Additionally, ILECs should not be allowed to offer consumers lower rates in exchange for extended PC freeze terms.

4. Carrier to Subscriber Liability

Many companies which provide long distance services often rely on the facilities of underlying carriers (i.e., resale). The resale of local services is also becoming more prevalent. Resellers should not be responsible for the mismanagement of an underlying carrier in the provision of services. Clear standards concerning responsibility for mismanagement of services should be established. For example, WinStar experienced a situation where a subsidiary of an underlying carrier marketed 10XXX services to customers in geographic areas where it could not complete the 10XXX calls. The calls that could not be completed via 10XXX dialing were accidentally passed to WinStar by an underlying carrier because the underlying carrier mistakenly had kept WinStar in its database as the last carrier of record for that telephone number. Some of the accounts in question were for customers who had disconnected from WinStar's service. WinStar's underlying carrier had failed to remove these customers from its reseller database and still showed them to be active WinStar customers. This activity resulted in subscribers contacting WinStar to allege that they had been converted to WinStar's service without authorization. In instances such as these, the carrier to which service has been converted should not be presumed to have committed an unauthorized conversion and should not be economically liable to the customer for the adjustment of calls.

WinStar does not support the proposal that consumers who allege that they have been wrongfully converted should be uniformly absolved of all charges for service.⁶ The public interest will be served if a proper balance is struck between carrier and subscriber liability. WinStar believes that to discharge all bills beyond the difference between what

the customer would have paid and what their statement would have been with their previous carrier (if the slamming carrier's rates were higher) would frustrate the goals of the Commission by increasing the number of complaints received, unduly burdening the Commission and the carriers who will have to devote additional resources to responding to the complaints. Moreover, customers who believe that they will receive phone service at no expense may have an incentive to file false slamming accusations against carriers from which they have both requested and received service. Subscribers could delay reporting an alleged incidence of unauthorized conversion with the intent of receiving *free* telephone service for as long as possible before reporting an alleged incident of unauthorized conversion.

In the event that the Commission chooses to adopt a proposal to absolve customers from charges incurred for service for which they claim to have been slammed, WinStar urges the Commission, in conjunction with the Federal Trade Commission, state utility commissions and attorneys general, and the industry to conduct a high profile consumer awareness campaign *and* mandate that the carrier be contacted after the first bill is received⁷ and that the carrier be liable only for that amount.

5. Preemption of State PC Change Rules

The Commission in its FNPRM does not address whether its carrier change rules will preempt the numerous PC change rule makings initiated by state public utility commissions. WinStar believes that from an operational and administrative standpoint,

⁶ FNPRM, para. 27.

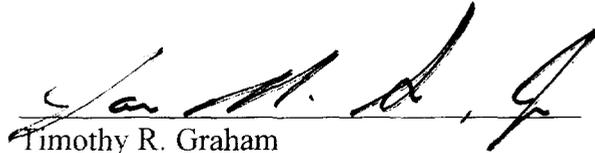
⁷ For example, the format of the bill could be such that a clear heading appears at the top of the invoice whenever a PC change has occurred which states: ABC Company, per your request, is now your [local / long distance] carrier.

uniform national rules are preferable to inconsistent and often conflicting state-specific regulations. Thus, WinStar advocates a national standard to which telecommunications carriers must adhere in the conversion of service.

WHEREFORE, BASED ON THE FOREGOING, WinStar Communications, Inc. requests that the Commission adopt its proposals regarding subscriber preferred carrier changes.

Respectfully submitted,

WINSTAR COMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read "Timothy R. Graham", is written over a horizontal line.

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