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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation; CC Docket No. 96-98; CS Docket 95-184; CCBPol 97-9; CC Docket No: 98-146; IB Docket No: 97-95

Dear Ms. Salas:

On November 17, 1998, Bob Berger, Russell Merbeth, Steve Merrill, Larry Spiwak and the undersigned, on behalf of *WinStar Communications, Inc.* ("WinStar"), met with the following FCC personnel:

Stagg Newman (OET)
Doug Sicker (OET)
Whitey Thayer (ASD)
Charles Iseman (OET)
Rebecca Arbogast (IB)
John Williams (OPP)
David Wye (WTB)
Karl Kensinger (IB)
Peytonn Wynns (CCB)
John Berresford (CCB)
Doug Webbink (IB)
Jennifer Fabian (CCB)

During the meeting, WinStar discussed its positions on record in the above-captioned proceedings concerning non-discriminatory access to buildings and rights-of-way and concerning the allocation of spectrum in the 38.6-40.0 GHz band. Attached is the material that was distributed during the meeting. Pursuant to Section 1.1206(a) of the FCC's rules, 47 C.F.R. § 1.1206(a), we are filing with the Secretary an original and 12 copies of this notice of *ex parte* presentation.

Winstar Communications, Inc.

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Should there be any questions regarding the above, please do not hesitate to contact the undersigned at 202-833-5678.

Very truly yours,

WinStar Communications, Inc.

Joseph M. Sandri, Jr.
VP & Regulatory Counsel

Enclosures

cc: Stagg Newman (OET)
Doug Sicker (OET)
Whitey Thayer (ASD)
Charles Iseman (OET)
Rebecca Arbogast (IB)
John Williams (OPP)
David Wye (WTB)
Karl Kensinger (IB)
Peytonn Wynns (CCB)
John Berresford (CCB)
Doug Webbink (IB)
Jennifer Fabian (CCB)

November 16, 1998

WinStar Communications, Inc./Federal Communications Commission

1. Introduction to WinStar Communications, Inc.

- 38 GHz licenses-277 area licenses, each covering up to 10,000 square miles (almost 200 million people)-licenses in the top 50 U.S. cities
- 28 GHz licenses: third highest bidder at recent auctions
- Hub Networks attached to Lucent Class 5 Switches
- Deploy in 30 top cities by December 31, 1998 and in the top 40 cities by the year 2000
- Over 30 Interconnection Agreements Completed- 44 of top 50 markets
  -RBOCs, GTE, Sprint, major independent LECs
- CLEC Authority - 30 jurisdictions; CAP Authority - 38 jurisdictions
- IXC Authority - 47 jurisdictions
- WinStar for Education: http://www.win4edu.com
  -LATTICE
  -Virtual Vietnam Wall: http://www.thevirtualwall.org

2. The Telecommunications Act of 1996 was crafted to promote competition by companies like WinStar

3. Non-Discriminatory Access by facilities-based CLECs to Customers via Building Rooftops, Inside Wire and Rights-of-Way is essential to the success of local competition.

- Facilities-based CLECs Are Stopped at the last "100 feet";
- Building owners hold virtual monopoly control over tenant access to CLECs;
- Incumbent LECs often pay nothing for building/customer access;
- Federal solution needed to ensure non-discriminatory building access.
- Section 207. Consumer access to wireless CLEC signals which include video cannot be blocked by "any restriction" placed by a building owner, covenant, etc. 47 C.F.R. 1.400.
- Section 224. Rule on WinStar Petition in CC Dkt. 96-98 seeking clarification that rooftops, risers (vertical and horizontal), inside wiring, utility closets are rights-of-way.
- Section 706. Broadband facilities-based providers like WinStar clearly offer advanced services. The FCC holds broad authority to improve building access conditions for advanced services providers.

4. Engineering studies clearly prove that ubiquitous satellite systems cannot economically or feasibly share the same spectrum with high density fixed services

- FCC conclusions at 28 GHz and 38 GHz clearly recognize this fact by concluding that band segmentation is necessary to protect FS licensees.
- Need FCC support in ITU process. U.S. policy should be to firmly declare "hands off" of 38.6-40.0 GHz fixed service licenses by prohibiting incessant U.S. sponsored satellite "studies" which foment uncertainty about status of FS licenses.
- Like at LMDS, domestic FSS downlinks at 38.6-40.0 GHz should be given the designator "secondary."

WinStar Talking Points:

Goal/Purpose of Section 706 Proceeding:

(1) True issue in this case is ***not*** interconnection & co-location *per se*, but to ensure that FCC is doing everything in its powers to promote, facilitate, and accelerate new alternative facilities-based loop plant.

(2) *If market performance is ever to improve and lead to tangible de-regulation*, then FCC must move away from static, incumbent-centric "perpetual resale model" of current loop plant – *i.e., FCC must affirmatively promote new facilities based entry for local loops!*

(3) Accordingly, while the FCC's current proposal arguably might help spur additional facilities-based entry, WinStar wants to remind the Commission that unless the other significant entry-deterring regulatory barriers to entry that were not specifically addressed in either the NPRM or NOI (*see, e.g.* TEC pleading) are eliminated, then this entire exercise is potentially will be rendered meaningless in practice.

"Tales from the Trenches" – The Economic Realities of Being a CLEC:

(A) Intermediate and long-term competition is not sustainable absent facilities-based competition in the local loop – *i.e.*, deployment of competing pathways to the end user.

(B) The demand for local loop competition is here today – the problem is that far too many structural and regulatory barriers (e.g., building access) remain that prevent alternative loop plant deployment in any kind of expedited fashion. Thus, believing that a policy based upon the notion that "through resale, sufficient consolidated alternative demand will inevitably lead to new entry" can actually substitute for demonstrable policies that affirmatively remove barriers to entry just doesn't work.

(C) While structural separation sounds good in theory, in practice it has little efficacy absent TOTAL separation (*see, e.g.*, failure of Rochester experiment). Indeed, an incumbent firm has neither any true incentive to divest itself *voluntarily* of monopoly bottleneck parts, nor any true incentive to stay structurally separated permanently if politically pressured to disaggregate in the short-term. *Only additional facilities-based entry for local loop facilities will create sufficient pressure to mitigate this inevitable conduct.*

(D) Although many at the moment are enamored of xDSL technology, xDSL is only this year's fancy electronics – you buy the piece-parts from a commercial vendor like DSC/Alcatel and slap them *on the incumbent's local loop.*

By contrast, WinStar and other fixed wireless vendors today provide xDSL equivalent services directly to the end user.

(E) Resale is a means to an end, not the ultimate solution.

(1) Resale serves a very useful purpose in competitive markets (e.g., protects against wasted resources; pro-competitive contestable effect.) Moreover, resale permits new entrants (including WinStar) to have "appearance" of ubiquity (*see, e.g., FCC's 1980 WATS/Resale Decision*).

(2) Without concurrently promoting additional facilities-based entry, however, static perpetual resale model may impose more economic costs than benefits received.

(3) This is the lesson of *Competitive Carrier* – *i.e.*, performance of domestic IXC market did not start to improve demonstrably until there were competing networks, hence the opportunity for stranded capacity in fact, hence development of a second tier wholesale market for resellers sustainable per market competition itself with significantly lessened regulation and in some markets complete deregulation.

Conclusion:

- With the exception of the local loop, switching, backhaul transmission, *etc*, effectively are commercial components which, if you have the capital, firms can obtain easily.
- Absent primary focus on deployment of competitive local loops, therefore, what remains merely is in practice what amounts to a game of arbitraging the piece parts of the incumbent at the margins.
- ***Thus, we don't need more "competitors" (i.e., arbitrageurs) per se – what we need are more loops!***
- Why? There IS no long-term sustainable resale/unbundled loop model that translates in practice in the market place, UNLESS there are competing networks.