

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Biennial Regulatory Review -- Amendment)
of Parts 0, 1, 13, 22, 24, 26, 27, 80,)
87, 90, 95, 97, and 101 of the)
Commission's Rules to Facilitate the)
Development and Use of the Universal)
Licensing System in the Wireless)
Telecommunications Services)

WT Docket No. 98-20

**COMMENTS OF WINSTAR COMMUNICATIONS, INC.
SUPPORTING AND OPPOSING PETITIONS FOR RECONSIDERATION**

WinStar Communications, Inc. ("WinStar"), by its attorneys, hereby submits its Comments supporting and opposing Petitions for Reconsideration in the above-captioned proceeding.¹

I. INTRODUCTION AND SUMMARY.

WinStar participated in the underlying rulemaking in this docket² and supports the Federal Communications Commission's ("Commission" or "FCC") implementation of the Universal Licensing System ("ULS") and consolidation of its

¹ Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, WT Docket No. 98-20, *Report and Order*, FCC 98-234 (rel. Oct. 21, 1998) ("Order"). The Order was published in the Federal Register on Dec. 14, 1999. 63 Fed. Reg. 68,904 (1999).

² WinStar filed Comments on May 22, 1998, and Reply Comments on June 16, 1998.

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service-specific procedural rules into a single, integrated Part 1. However, WinStar is filing these Comments to ensure that the Commission does not misconstrue the Petitions for Reconsideration filed by Comsearch and NSMA. Specifically, WinStar wishes to make clear that the arguments made by Comsearch and NSMA regarding mandated frequency coordination and notification of affected parties do not apply to geographic licenses, i.e., licenses that are granted on an area-wide basis. Area-wide licenses, such as licenses in the LMDS and 38 GHz bands, are subject to an entirely different licensing regime which provides for maximum operational flexibility. Interference problems faced by geographic licensees are far less prevalent than for site-specific licensees. Thus, the concerns underlying Comsearch and NSMA's Petitions are not applicable to geographic licensees.

Subject to the clarification above, WinStar generally supports NSMA's Petition.

WinStar agrees with FCBA and BellSouth that the Commission's Taxpayer Identification Number ("TIN") reporting requirements are overinclusive in that officers, directors, and other noncontrolling entities associated with applicants are required to provide TIN information as a condition of obtaining an FCC license. WinStar also agrees with FCBA and BellSouth that Internet access to the ULS should be permitted in addition to access through the use of a point-to-point protocol ("PPP") connection. Finally,

WinStar supports FCBA's positions that the Commission should provide for a 24-hour grace period for ULS filers experiencing technical difficulties and that the Commission should permit licensees who inadvertently miss their renewal deadlines to file reinstatement applications.

II. THE PETITIONS OF NSMA AND COMSEARCH REGARDING FREQUENCY COORDINATION DO NOT APPLY TO AREA-WIDE LICENSEES SUCH AS WINSTAR.

Both NSMA and Comsearch urge the Commission to reconsider its amendment of Part 101 to eliminate the notification requirement for minor technical amendments and contend that notice of amendments or modifications should be sent to all parties involved in the original coordination.³ NSMA and Comsearch assert that many minor changes potentially could cause interference and should be prior coordinated.⁴ However, due to the differences between site-specific Part 101 licenses and geographic Part 101 licensees, such as those held by WinStar in the LMDS and 38 GHz bands,⁵ NSMA's and Comsearch's concerns are inapposite to geographic licenses under Part 101.

³ NSMA Petition at 4-5; Comsearch Petition at 2-3.

⁴ NSMA Petition at 4-5; Comsearch Petition at 4-5.

⁵ BellSouth states that point-to-point microwave applicants should not be required to specify a geographic area of operation because "[b]y definition, point-to-point microwave operations are limited to communications between two defined points." BellSouth Petition at 11. WinStar wishes to clarify that its 38 GHz microwave licenses are geographic licenses, not path-specific licenses.

While point-to-point fixed service is path-specific, 38 GHz and LMDS services are licensed in exclusive geographic areas. In adopting service rules for geographic area licensees, the Commission intended to give these services maximum operational flexibility. For example, in CC Docket No. 92-297, the Commission declined to adopt power flux density limits for LMDS systems, stating that "[t]he regulatory scheme being adopted provides each LMDS licensee complete control over its own facilities within its designated service area."⁶ Hence, concerns regarding frequency coordination and the impact minor technical changes will have on other licensees are minimized for geographic licensees. Accordingly, to the extent that the Commission adopts the suggestions of NSMA and Comsearch, a specific exception should be carved out for geographic licensees to preserve operational flexibility in these services.

III. THE COMMISSION SHOULD RECONSIDER ITS TIN REPORTING REQUIREMENTS AS URGED BY PETITIONERS.

FCBA and BellSouth request that the Commission reconsider its decision to require reporting of TIN information for entities other than the applicant, including officers, directors, and other non-controlling parties such

⁶ In re Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, CC Docket No. 92-297, *Second Report and Order and Order on Reconsideration*, 12 FCC Rcd. 12545, at ¶ 278 (1997).

as 10% or greater shareholders.⁷ WinStar agrees that only applicants or licensees should be required to provide TINs. As stated by FCBA and BellSouth, the Federal Debt Collection Improvement Act of 1996 ("DCIA") only requires the collection of TINs from applicants and licensees because a person is only "doing business with" the FCC if such person is "an applicant for, or recipient of, a Federal license, permit, right of way, grant or benefit payment."⁸ Underlying parties to the application are not the true recipients of federal benefits and thus are not "doing business" with the FCC.⁹ Further, requiring TINs for officers, directors, and other non-controlling entities raises serious privacy concerns.¹⁰ Hence, the Commission should not broaden the scope of its DCIA TIN collection information to include TINs for entities other than the applicant or licensee.

IV. WINSTAR CONCURS WITH PETITIONERS THAT ULS SHOULD BE ACCESSIBLE FROM THE INTERNET.

WinStar concurs with FCBA and BellSouth that the ULS should be accessible from the Internet in addition to the dial-up PPP connection adopted in the Order.¹¹ As WinStar

⁷ FCBA Petition at 10; BellSouth Petition at 6.

⁸ 31 U.S.C. § 3701(c)(2)(B).

⁹ FCBA Petition at 8.

¹⁰ FCBA Petition at 11; BellSouth Petition at 7.

¹¹ FCBA Petition at 20; BellSouth Petition at 10.

asserted in its Reply Comments, based on its experience in the LMDS auction, Internet access would be superior to PPP access, particularly in a network environment.¹² WinStar agrees with FCBA and BellSouth that Internet access will allow applicants and licensees to access the ULS over high-speed data networks and permit them to draft and submit applications more quickly than would be possible over a PPP connection.¹³

Moreover, the Commission should not be concerned that permitting Internet access would create security issues. As stated by FCBA, encryption technology offers a high degree of security to users of the ULS.¹⁴ The security of the Commission's computer network should not be a concern, as the ULS can be protected by firewalls and security devices similar to the protections afforded the Commission's Electronic Comment Filing System.¹⁵

V. THE FCC SHOULD GRANT FCBA'S REQUEST AND PROVIDE A 24-HOUR GRACE PERIOD FOR APPLICANTS WHO EXPERIENCE TECHNICAL PROBLEMS WITH THE ULS.

WinStar agrees with FCBA that the Commission should provide a 24-hour grace period for applicants who

¹² WinStar Reply Comments at 2.

¹³ FCBA Petition at 21; BellSouth Petition at 10.

¹⁴ FCBA Petition at 21.

¹⁵ See Electronic Filing of Documents in Rulemaking Proceedings, GC Docket No. 97-113, *Report and Order*, 13 FCC Rcd. 11322 (1998).

inadvertently miss filing deadlines due to technical difficulties accessing the ULS.¹⁶ In becoming conversant with ULS, applicants and licensees inevitably will experience technical problems. Moreover, as the FCC converts new services to the ULS, applicants and licensees for different services will begin to use the ULS at various points in time.¹⁷ For example, the Part 101 point-to-point and point-to-multipoint microwave service has not yet been converted to the ULS.¹⁸ Thus, Part 101 licensees such as WinStar will not become familiar with ULS until later this year, while other licensees, such as 800 MHz licensees, began to use ULS on Feb. 16, 1999. Accordingly, WinStar supports a 24-hour grace period for applicants and licensees, at least until all services have been connected to ULS and the licensees in that service have had a chance to become familiar with ULS. WinStar recommends that the Commission institute the 24-hour grace period for six months after electronic filing becomes mandatory in a service.¹⁹

¹⁶ FCBA Petition at 23.

¹⁷ See Wireless Telecommunications Bureau Announces New Universal Licensing System (ULS) Filing Procedures and Revised Application Forms Effective February 16, 1999, Public Notice, DA 99-314, at 2 (rel. Feb. 10, 1999) (listing services that currently use ULS).

¹⁸ See id. (stating that for all other wireless services, the Bureau will continue to use pre-ULS "legacy" databases to process applications until each service is converted).

¹⁹ See Order at ¶ 24. For services that are subject to licensing by auction and for common carrier services, electronic filing becomes mandatory either (1) on July 1,

VI. WINSTAR AGREES WITH FCBA THAT THE FCC SHOULD PERMIT REINSTATEMENT APPLICATIONS.

WinStar supports FCBA's position that the FCC should continue to permit reinstatement applications.²⁰ WinStar agrees with FCBA that licensees will not intentionally disregard renewal deadlines because licensees invest large sums of money in order to build out their systems prior to their applicable construction deadlines.²¹ Permitting licensees who have inadvertently filed an untimely renewal application to request reinstatement serves the public interest by ensuring the most efficient use of licensed spectrum by the licensee who has built out the spectrum and begun providing service. Thus, the Commission should not eliminate this beneficial rule.

1999 or (2) six months after application processing for ULS begins in that service, whichever is later.

²⁰ FCBA Petition at 13.

²¹ Id. at 14.

VII. CONCLUSION.

For the foregoing reasons, WinStar respectfully urges the Commission to take the actions outlined herein.

Respectfully submitted,

WINSTAR COMMUNICATIONS, INC.

By:



Philip L. Verveer
Angie Kronenberg
Sophie J. Keefer

WILLKIE FARR & GALLAGHER

Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036-3384
Tel. (202) 328-8000

Its Attorneys

Timothy R. Graham
Joseph M. Sandri, Jr.
Barry J. Ohlson

WINSTAR COMMUNICATIONS, INC.

1146 19th Street, N.W., Suite 200
Washington, D.C. 20036
Tel. (202) 833-5678

February 24, 1999

CERTIFICATE OF SERVICE

I, Sophie J. Keefer, do hereby certify that on this 24th day of February, 1999, copies of the foregoing "Comments Supporting and Opposing Petitions for Reconsideration." were delivered by hand, unless otherwise indicated, to the following parties:

Thomas Sugrue
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 5002
Washington, DC 20554

Steven Weingarten
Chief, Commercial Wireless Division
Federal Communications Commission
2100 M Street, N.W.
Room 700
Washington, DC 20554

Wilbert E. Nixon, Jr.
Staff Attorney
Policy and Rules Branch
Commercial Wireless Division
Federal Communications Commission
2100 M Street, N.W.
Room 700
Washington, DC 20554

D'Wana Terry
Chief, Public Safety and Private Wireless
Division
Federal Communications Commission
2025 M Street, N.W.
Room 8010
Washington, DC 20554

Ramona Melson
Deputy Chief, Policy and Rules Branch
Public Safety and Private Wireless Division
Federal Communications Commission
2025 M Street, N.W.
Room 8010
Washington, DC 20554

John J. Borkowski
Branch Chief, Policy and Rules Branch
Public Safety and Private Wireless Division
Federal Communications Commission
2025 M Street, N.W.
Room 8010
Washington, DC 20554

Susan Magnotti
Staff Attorney
Policy and Rules Branch
Public Safety and Private Wireless Division
Federal Communications Commission
2025 M Street, N.W.
Room 8010
Washington, DC 20554

Ira Keltz
Engineer
Public Safety and Private Wireless Division
Federal Communications Commission
2025 M Street, N.W.
Room 8010
Washington, DC 20554

Leonard R. Raish*
Mitchell Lazarus
Fletcher Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, VA 22209
(Attorneys for Comsearch)

Robert J. Miller*
Nicole S. Batten
Gardere & Wynne, L.L.P.
1601 Elm Street, Suite 3000
Dallas, TX 75201
(Attorneys for National Spectrum Managers
Association)

William B. Barfield*
Jim O. Llewellyn
1155 Peachtree Street, NE
Suite 1800
Atlanta, GA 30309-2641
(Attorneys for BellSouth Corporation)

C. Claiborne Barksdale*
1100 Peachtree Street, NE
Suite 910
Atlanta, GA 30309-4599
(Attorney for BellSouth Corporation)

David G. Frolio*
1133 21st Street, N.W.
Washington, D.C. 20036
(Attorney for BellSouth Corporation)

Lawrence Roberts*
Federal Communications Bar Association
1020 19th Street, N.W.
Suite 325
Washington, D.C. 20036

ITS, Inc.
2100 M Street, NW
Room 140
Washington, DC 20037


Sophie J. Keefer
Sophie J. Keefer

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