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August 6, 1999

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals - TW-A325
445 Twelfth Street, S.W.
Washington, DC 20554

RECEIVED
AUG 6 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Notice of Ex Parte Written Presentation in CC Docket No. 96-98 ✓

Dear Ms. Salas:

Pursuant to Section 1.1206(b) of the Commission's rules, 47 C.F.R. Section 1.1206(b), WinStar Communications, Inc. ("WinStar") provides for inclusion in the public record of the above referenced proceeding the attached letter, which was submitted to Claudia Fox, Jake Jennings, Carol Matthey, Anthony Mastando and Stanford Williams on August 5, 1999.

Two copies of this letter are being filed with the Secretary of the Commission in accordance with Section 1.1206(b) of the Commission's rules.

Please contact the undersigned if any questions arise concerning this submission.

Sincerely,



Kathleen L. Greenan
Counsel for WinStar Communications, Inc.

Attachment

cc: Ms. Claudia Fox
Mr. Jake Jennings
Ms. Carol Matthey
Mr. Anthony Mastando
Mr. Stanford Williams
Ms. Janice M. Miles
International Transcription Service

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August 5, 1999

VIA HAND DELIVERY

Ms. Claudia Fox
Mr. Jake Jennings
Ms. Carol Matthey
Mr. Anthony Mastando
Mr. Stanford Williams
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

Re: Ex Parte Written Presentation
Second Further Notice of Proposed Rulemaking, CC Docket No. 96-98

Dear Secretary:

Following an opportunity to review and consider the numerous comments and reply comments filed in the above-referenced docket, WinStar Communications, Inc. ("WinStar") respectfully submits this letter in support of maintaining directory assistance as a mandatory unbundled network element ("UNE"). Although some parties argue that alternative providers of directory assistance exist, WinStar submits that the existence of these alternative providers does not connote quality service nor service equal to that provided by the ILECs. Rather, WinStar submits that the directory assistance services of these alternative providers is significantly inferior to the directory assistance services of the ILEC. Alternative providers ("third party vendors") of directory assistance cannot and do not provide directory assistance services that can compete with the quality, accuracy, and reliability of the ILEC directory assistance services. WinStar has experienced first hand, to its own commercial detriment, the inadequacy of directory assistance services from a leading third party vendor. WinStar respectfully requests that the Commission consider WinStar's experience described herein and find that failure to provide access to ILEC directory assistance will effectively impair, in practice, a competitive local exchange carrier's ("CLEC") ability to offer local exchange services in competition with the ILEC.

Section 251(c)(3) of the Communications Act, as amended, mandates nondiscriminatory access to ILEC network elements on an unbundled basis for the provision of a telecommunications

service by a CLEC.¹ As such, directory assistance is one of those network elements (UNEs) available to CLECs. CLECs wishing to provide competitive local exchange services must have access to UNEs such as directory assistance that are at least equal to the directory assistance services provided by the ILEC to its own customers. Directory assistance is an essential component of local exchange services. Consumers, both residential and business, rely on directory assistance and consider it an integral part of their local exchange services and demand that access be immediate and accurate. The accuracy, reliability and timeliness of directory assistance services is critical for the service to be of any use to a consumer. If the third party directory assistance service provides wrong numbers, inaccurate information about a business or individual, or requires a consumer to wait several minutes for information, the service will be unacceptable to the consumer and will not permit the CLEC to provide competitive levels of service. Yet, WinStar's own experience clearly demonstrates that current third party vendor services are not an acceptable substitute for ILEC services and lack of access to ILEC directory assistance would limit a CLEC's ability to provide local service in a fair and equitable manner.

In the initial stages of providing local exchange services, WinStar contracted with a third party vendor for directory assistance,² precisely because WinStar did not wish to be held captive to the related business practices of its toughest, meanest competitor, the ILECs. During the two years that WinStar used this alternative directory assistance vendor, WinStar received numerous complaints from its customers about the third party directory assistance. In fact, in WinStar's experience, up to 30 percent of all directory assistance inquiries were answered inaccurately by WinStar's chosen third party provider. As a result, commencing in the fourth quarter of 1997 and proceeding throughout 1998 and into the first half of 1999, WinStar transitioned virtually all of its directory assistance services nationwide to the ILEC. This transition came at significant costs since, among other things, trunks to the platforms of the third party vendor had to be abandoned, while new trunking with all the attendant costs had to be provided to connect with the ILEC platforms. To withdraw directory assistance as a UNE offering at this time would have a significant negative economic impact on WinStar and other similarly situated CLECs (at least absent grandfathering of those services already taken by CLECs). To allow withdrawal of ILEC directory assistance completely as a commercial offering would have dramatic negative operational impacts as well for WinStar and other affected CLECs.

¹47 U.S.C. § 251(c)(3).

²WinStar commenced facilities-based CLEC operations in November 1996, initially in the New York market.

Further, there is a broad consensus among commenters in this docket that directory assistance from sources other than the ILEC are inferior.³ Commenters repeatedly cite significant, damaging drawbacks to directory assistance provided by third party vendors. For example, ILEC directory databases are updated daily. In contrast, third party vendor directories are updated only once a year, if that. While ILECs receive direct access to and continual updates from consumers on their location and associated telephone numbers, third party vendors must search for consumer information from yellow and white page listings, United States Postal Service change of address forms, motor vehicle registration records, and voter registration records.⁴ Moreover, since third party vendors purchase database updates once a year, approximately 25% of the listings used by third party vendors are either disconnected or changed. This percentage is a White Pages industry rule of thumb on directory accuracy at the end of a twelve (12) month directory life cycle. The third party vendor is basically no more accurate than a paper directory, while the ILEC has access to a database accurate on a daily basis, a major advantage.

The result is that third party vendors provide information to consumers derived from a database full of outdated information, often as a direct result of the anticompetitive "gaming" that continues to be engaged in by the ILECs to this day. As a consequence, consumers pay for erroneous telephone numbers or inadequate information. It would be ironic if the ILECs were now allowed to reap a double reward from actively limiting, and diluting, the ability of third party vendors to provide comparable directory assistance services on a competitive basis in the first instance, and hence directly impacting the operational abilities of CLECs by extension.

Providing customers with erroneous information is not the only drawback. Customers attempting to obtain information from directory assistance of third party vendors experience significant delays. Customers who are accustomed to ILEC directory assistance become frustrated and recognize that it would be quicker to obtain the needed information via manual sources (*i.e.*, Yellow or White Pages). Rendering the "CLEC" directory assistance service as worthless, the customer evaluates negatively the CLEC local exchange services and the CLEC loses goodwill.

Other problems arise from the inability to access the ILEC's directory assistance database. As AT&T correctly points out, third party vendors often do not have access to unlisted customers.

³*E.g.*, AT&T Corp. at 126-127; Cable & Wireless at 38; Choice One Communications at 20; CompTel at 46; CoreComm Limited 32-33; Cox Communications at 32-34; GST Telecom Inc. at 20; Hyperion Telecommunications, Inc. at 20; MCIWorldCom at 70-74; McLeodUSA; Metro One; Net2000 Communications Inc. 16-17; Network Plus at 20; Teltrust at 7-10; and Qwest at 87-88.

⁴*See* AT&T Corp. at 131; MCIWorldCom at 72.

This is extremely problematic. The CLEC cannot distinguish between those numbers they have failed to obtain and those numbers that are unlisted. Even worse, a CLEC may have a number and be unaware of its unlisted status. This is a problem for the ILEC, the CLEC, and the customer wishing to maintain an unlisted telephone number.⁵

It is clear that ILEC directory assistance services are the result of an entrenched historical monopoly that simply cannot be replicated by another provider right now or in the near future. In short, the ILEC holds a wealth of vital information that other entities cannot recreate. Since the ILEC continues to serve the majority of consumers in a local exchange area, it has the best, up-to-date, and accurate list of phone numbers. Without access to the ILEC directory assistance database, CLECs cannot provide accurate, timely directory assistance. The ILEC continues to have the advantage of receiving critical customer information, which remains essential to providing quality, accurate information to consumers.

Those parties that argue against maintaining directory assistance as a UNE rely heavily on the premise that alternatives exist. An alternative provider alone is not sufficient to ensure that CLECs will not be impaired. WinStar submits that sources of directory assistance independent of the ILEC are not available at comparable cost, quality, and timeliness as ILEC provided services. WinStar urges the Commission to consider not only the availability of network elements from sources independent of the ILEC, but also the quality of those sources. If the quality of a network element from a third party is not equal to or greater than that of the ILEC, there is no *comparable* independent source that will allow CLECs to compete on a level playing field with the ILEC. In fact, as WinStar's own experience demonstrates, third party vendor services today are not only unequal, but are in fact dramatically inferior in quality to those of the ILEC. If CLECs are relegated to offering substandard services to their customers, CLECs will not only lose customers, but will be unable to compete effectively in the local exchange marketplace.

⁵For instance, some customers who are public servants (*i.e.*, police, fire, teachers) and opt for an unlisted number in order to maintain privacy may be harmed irreparably. The potential confusion caused by a third party vendor's erroneous database also provides an opportunity for mischief and misdeeds. Historically, ILEC provided directory service has been protected, and has diligently preserved the anonymity of unlisted customers.

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WinStar respectfully requests that the Commission consider WinStar's experience described herein and find that failure to provide access to ILEC directory assistance will effectively impair a CLEC's ability to offer local exchange services in competition with the ILEC.

If you have any questions, please do not hesitate to contact us.

Respectfully submitted,



Patrick Donovan
Kathleen L. Greenan
Counsel for WinStar Communications, Inc.

cc: Robert G. Berger, Esq., WinStar Communications, Inc.
Russell Merbeth, Esq., WinStar Communications, Inc.
Les Hinton, WinStar Communications, Inc.
Stephen Murray, WinStar Communications, Inc.