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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
and	)	
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98

COMMENTS OF WINSTAR COMMUNICATIONS, INC.

Russell C. Merbeth
Michael Carowitz
Larry Walke
Winstar Communications, Inc.
1615 L Street, N.W. Suite 1260
Washington, D.C. 20036
(202) 367-7600

Dated: October 12, 2000

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COMMENTS OF WINSTAR COMMUNICATIONS, INC.

Winstar Communications, Inc. ("Winstar"), pursuant to Section 1.415 of the Commission's rules, submits these comments in accordance with the Commission's Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 ("Second FNPRM") and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98 ("Fifth FNPRM").[1]

INTRODUCTION

Winstar is a publicly-held company which, among other functions, develops, markets, and delivers local and long distance telecommunications and broadband services in the United States. Winstar specializes in providing high capacity access to its end users at fixed locations over a fixed wireless system. Winstar provides its services on both a point-to-point and point-to-multipoint basis, primarily over its own end-to-end broadband network using licenses in the 38, 26, 28 and 31 GHz spectrum bands. Using its own microwave radio systems instead of conventional incumbent local

[1] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 00-297, *rel.* Aug. 10, 2000 ("Advanced Services Reconsideration Order").

exchange carrier ("ILEC") technology decreases Winstar's dependency on ILECs' facilities. Also, reliance on wireless technology reduces Winstar's loop costs, offers increased bandwidth, and is more quickly deployed. Through its operating affiliates, Winstar currently provides facilities-based local telecommunications services in more than 70 markets throughout the United States, Europe, Asia and Latin America.

DISCUSSION

Winstar files these comments simply to highlight the Commission's longstanding commitment to the mandated collocation of microwave transmission facilities and to note that nothing in the D.C. Circuit's decision in *GTE v. FCC*[2]should affect the status of microwave collocation. In addition, Winstar supports the Comment of the Association of Local Telecommunications Services ("ALTS"). In particular, Winstar urges the Commission to adopt ALTS' sensible and pro-competitive recommendation that ILECs finally be required to treat microwave collocation the same as other types of physical collocation and provide microwave collocation as part of their standard tariffed collocation offerings.

Since 1992, with its adoption of the Special Access Expanded Interconnection Order, the Commission has endorsed the interconnection of microwave transmission facilities.[3] In that Order, generally, the Commission adopted rules pursuant to Section 201 of the Communications Act that required LECs to offer physical and virtual collocation for competitors seeking to locate interstate special access and switched transmission facilities at LEC premises. With respect to microwave collocation, the Commission cast aside the objections of most ILECs in requiring that ILECs provide expanded interconnection of microwave transmission facilities, where reasonably

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[2] *GTE Service Corp. v. FCC*, 205 F.3d 416 (D.C. Cir. 2000) ("*GTE v. FCC*").

[3] *Expanded Interconnection with Local Telephone Company Facilities; Amendment of the Part 69 Allocation of General Support Facility Costs*, CC Docket Nos. 91-141 and 92-222, Report and Order and

feasible.[4] The Commission presciently stated that permitting "microwave interconnection will expand choices generally for customers."[5]

The Commission next directly addressed microwave collocation in an Order primarily concerning virtual collocation, in which the Commission expanded the methods through with microwave collocation must be provided. Specifically, the Commission clarified that, when microwave collocation is not reasonably feasible through physical collocation, microwave collocation should be offered through virtual collocation using ILEC equipment. The Commission also cautioned ILECs that it "expect[s] the LECs to make reasonable efforts to accommodate requests for microwave interconnection arrangements."[6]

Following the enactment of the Telecommunications Act of 1996,[7] the Commission took steps to harmonize its policies governing microwave collocation with Section 251(c)(6) of the 1996 Act, which requires ILECs to offer physical collocation of equipment necessary for interconnection or access to unbundled network elements on just, reasonable and nondiscriminatory conditions.[8] In its seminal First Local Competition Order, and specifically in response to Winstar's comments, the Commission stated that microwave collocation, just like any type of collocation, is required under Section 251(c)(6) of the 1996 Act.[9] The Commission thus established a rule requiring ILECs to permit competitors to use physical collocation for microwave transmission

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Notice of Proposed Rulemaking, 7 FCC Rcd 7369, 7416 (1992) ("Special Access Expanded Interconnection Order"), *vacated in part and remanded, Bell Atlantic v. FCC*, 24 F.3d 1441 (1994).

[4] *Id.* The Commission was not persuaded by the ILECs' list of potential problems associated with mandating microwave interconnection, including equipment compatibility and the alleged inability of slanted roofs to support antennas, among other easily resolvable obstacles. *Id.*, 7 FCC Rcd at 7415.

[5] *Id.*, 7 FCC Rcd at 7416.

[6] *Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, Memorandum Opinion and Order, 9 FCC Rcd 5154, 5178-79 (1994).

[7] Telecommunications Act of 1996, Pub. L. No. 104-104, 100 Stat. 56 (1996) (the "1996 Act").

[8] 47 U.S.C. Section 251 (1996).

[9] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Services*

facilities unless it is not practical for technical reasons or because of space restrictions, in which case the ILEC should provide virtual collocation.[10] The significance of this mandate may be found in its lack of controversy. To our knowledge, no parties objected to the Commission's implementation of Section 251(c)(6) with respect to microwave collocation.

In fact, the Commission did not even mention microwave collocation in the Advanced Services Order,[11] or in the Advanced Services Reconsideration Order and Second FNPRM and Fifth FNPRM.[12] One can only surmise from this lack of attention that no one – not the Commission, the Court, or private industry -- finds anything extraordinary about mandatory microwave collocation. In this vein, Winstar describes below how microwave collocation fits well within the Commission's remanded interpretation of Section 251(c)(6), and also within the confines of the court's more narrow view of the provision.

In the Advanced Services Order, the Commission interpreted the collocation policies it set forth in the First Local Competition Order. Essentially, the Commission mandated the collocation of all equipment that is necessary for interconnection or access to unbundled network elements ("UNEs"), and defined "necessary" to mean equipment that is "used or useful" for interconnection or access to UNEs. The Commission thus required collocation of such equipment, regardless of whether the equipment performs any other functions.[13] As mentioned above, the Commission was silent on the matter of microwave collocation, and left its rule section governing

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Providers, CC Docket No. 95-185, First Report and Order, 11 FCC Rcd 15499, 15796 (1996) ("First Local Competition Order"), citing Winstar Comments at p. 4.47 C.F.R. Section 51.323(d)(4) (1996).

[10] 47 C.F.R. Section 51.323(d)(4) (1996).

[11] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761, (1999) ("Advanced Services Order"), *aff'd in part and remanded in part sub nom. GTE v. FCC.*

[12] *See supra* n.1.

[13] Advanced Services Order, 14 FCC Rcd at 4776.

microwave collocation unchanged.[14] Winstar believes that the Commission rightly found no reason to mention microwave collocation because this type of collocation clearly fell within the confines of its interpretation of the 1996 Act's collocation provisions. That is, the Commission deemed microwave transmission facilities "used" or "useful" for interconnection by fixed wireless service providers, and thus continued to mandate the collocation of such facilities.

In the Second FNPRM, the Commission seeks comment on the D.C. Circuit's finding that the Commission's interpretation of the term "necessary" in Section 251(c)(6) "seems overly broad."[15] The court found that, rather than "used or useful", the term "necessary" is more akin to "something that is indispensible or required to achieve a certain result."[16] Winstar submits that microwave collocation falls well within the boundaries of the court's more strict interpretation of Section 251(c)(6).

For example, the Commission asks whether it should adopt an interpretation of "necessary" along the lines of that in Section 251(d)(2)(A) of the 1996 Act. There, the Commission decided that a proprietary network element is "necessary" within this provision "if, taking into consideration the availability of alternative elements outside the incumbent's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element would, as a practical matter, economic, and operational matter, preclude a requesting carrier from providing the services it seeks to offer."[17]

Microwave collocation is both required and indispensible to Winstar's delivery of its services. Moreover, lack of access to microwave collocation would, as a matter of

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[14] *See supra* n. 9.

[15] Second FNRPM at para. 74; *GTE v. FCC*, 205 F.3f at 422.

[16] *Id.* On the question of whether, and if so, how, the court's view may require the Commission to revise its policies, Winstar herewith associates itself with ALTS' comments.

both economics and operations, largely preclude Winstar from providing its services. Winstar has attempted to build its network in a way that would foster less dependence on ILEC facilities but would still co-exist successfully with the traditional public switched network. To this end, Winstar has built its infrastructure from the ground up as a "purpose built" network that provides an alternative to the mere retrofitting of existing ILEC infrastructure. Winstar's local entry calls for it to use its 38 GHz microwave technology (instead of terrestrial cable) for transport of aggregated traffic from Winstar's hub sites to an ILEC's end office or tandem.

Like other competitive local exchange carriers, Winstar often maintains a collocation cage or other space in or near a LEC's end office or tandem, which interconnects on the port side of the LEC's switching facilities. However, instead of running fiber cable from its premises to the LEC's switching facilities, Winstar relies on microwave transmitters placed on the roofs of these buildings to interconnect its wireless network with the ILEC network. Therefore, in order for Winstar to interconnect on the premises of a LEC, it must be able to mount its transmission facilities on the roofs of LEC end offices and tandems.[18] Without the ability to collocate microwave equipment in an ILEC's offices, Winstar's ability to enter into many markets could be unreasonably delayed or precluded altogether.

Accordingly, Winstar urges the Commission merely to note that the status of microwave collocation remains unchanged under any revised interpretation it conceives in response to the D.C. Circuit's remanding of the Advanced Services Order. Microwave collocation is indispensible and required for Winstar and other fixed wireless providers to deliver their services, and nothing in the court's decision should affect its use.

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[17] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3686, 3721 (1999) ("UNE Remand Order").

Finally, Winstar urges the Commission to remove the remaining obstacles to CLECs' actual employment of microwave collocation; namely, arguments by ILECs that microwave collocation is somehow different from other types of physical collocation and therefore must be requested by CLECs through ICB arrangements based on *bona fide* requests. For a fuller discussion of this predicament, Winstar refers the Commission to ALTS' comments, and adds only that until ILECs offer microwave collocation as part of their standard tariffed offerings, competitors will continue to encounter unnecessary delay and expense in bringing the benefits of competition to many potential customers.

CONCLUSION

For the foregoing reasons, Winstar respectfully requests that the Commission adopt rules consistent with the principles discussed herein.

Respectfully submitted,

Russell C. Merbeth
Michael Carowitz
Larry Walke
Winstar Communications, Inc.
1615 L Street, N.W. Suite 1260
Washington, D.C. 20036
(202) 367-7600

Dated: October 12, 2000

[18] The Commission asked competitors to describe the functionalities of the equipment they seek to interconnect. Second FNPRM at para. 81.