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

In the Matter of	)	
	)	
Section 63.71 Application of Winstar Communications, LLC and Certain of its Subsidiaries for Authority to Discontinue Domestic Telecommunications Services	))))	WC Docket No. 04-154 Comp. Pol. File No. 680

ORDER

Adopted: June 14, 2004 **Released:** June 14, 2004

By the Chief, Competition Policy Division:

I. INTRODUCTION

1. In this Order, we grant the application of Winstar Communications, LLC, and certain of its subsidiaries, including Winstar Communications of Arizona, LLC; Winstar of Delaware, LLC; Winstar of Georgia, LLC; Winstar of Hawaii, LLC; Winstar of Indiana, LLC; Winstar of Louisiana, LLC; Winstar of Pennsylvania, LLC; Winstar of Virginia, LLC; and Winstar of West Virginia, LLC (collectively, Winstar or Applicants) to discontinue the provision of certain U.S. domestic telecommunications services, pursuant to section 214(a) of the Communications Act of 1934, as amended (the Act),[1] and section 63.71 of the Federal Communications Commission's (Commission) rules.[2] As explained in further detail below, authority to discontinue is granted consistent with Winstar's agreement to continue providing service to the remaining commenters in this proceeding, the Law Offices of DeCastro, West, Chodorow, Glickfeld & Nass, Inc. (DeCastro), Grand Circle Corporation (Grand Circle), the Law Offices of Lawrence Rosenzweig Professional Corporation (Rosenzweig), and WebNet, Inc. (WebNet), and to Lloyd Goldwater (Goldwater), a customer also addressed in the comments, to facilitate these customers' transition to alternative services.

II. BACKGROUND

2. On April 15, 2004, Winstar filed an application with the Commission requesting authority under section 214(a) of the Act and section 63.71 of the Commission's rules to discontinue certain domestic telecommunications services.[3] Specifically, Winstar indicates that it seeks authority pursuant to section 63.71 to discontinue the provision of local, domestic long

[1] 47 U.S.C. § 214(a).

[2] 47 C.F.R. § 63.71.

[3] On April 30, 2004, Winstar filed a letter to clarify that the "Internet" services referenced in its application include SDSL services provided over Winstar's fixed wireless facilities.

distance, toll free, and SDSL services provided to customers located in the states of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland (areas other than Washington, D.C. suburbs), Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia (areas other than Washington, D.C. suburbs), Washington, West Virginia, Wisconsin and Wyoming.[4] Winstar states that it planned to discontinue these services on June 15, 2004, and that it mailed written notices to affected customers in Texas on April 14, 2004, and to all other affected customers on April 7, 2004.[5]

3. By Public Notice dated May 14, 2004, the Commission notified the public that, in accordance with section 63.71(c), the application would be deemed to be automatically granted on the thirty-first (31st) day after the release date of the notice, unless the Commission notified Winstar that the grant would not be automatically effective.[6] The Commission further noted that Winstar indicated in its application that it would not discontinue service until June 15, 2004. Accordingly, the Commission stated that pursuant to section 63.71(c), and absent further Commission action, Winstar could not terminate services to the customers affected by this application until June 15, 2004. The Commission received five comments in response to the Public Notice and Winstar's notice to its customers.[7] Specifically, DeCastro, Grand Circle, Rosenzweig, WebNet, and Yaron, all of which are customers of Winstar in the affected areas, filed comments objecting to the proposed discontinuance on the grounds that they could not secure alternative service by the proposed discontinuance date.[8] In a letter dated June 8, 2004, Yaron withdrew its request for additional time indicating that it had found alternative service.[9] On June 10, 2004, Winstar filed a letter indicating that it has agreed to continue to provide service to DeCastro, Grand Circle, Rosenzweig, WebNet, and, if necessary, Goldwater, to facilitate these customers' transition to

[4] The application indicates that Winstar is non-dominant with respect to these services.

[5] Winstar Application at 2. *See* 47 C.F.R. § 63.71(a).

[6] *Comments Invited on Application of Winstar Communications, LLC and Certain of its Subsidiaries to Discontinue Domestic Telecommunications Services*, Public Notice, WC Docket No. 04-154, Comp. Pol. File No. 680, DA 04-1381 (rel. May 14, 2004).

[7] *See* DeCastro Comments; Grand Circle Comments; Rosenzweig Comments; WebNet Comments; Yaron & Associates Attorneys at Law (Yaron) Comments.

[8] *See* DeCastro Comments at 3 (requesting an extension to July 30, 2004); Grand Circle Comments at 1 (objecting to Winstar's discontinuance before alternative service can be found); Rosenzweig Comments at 1 (objecting to Winstar's discontinuance, indicating that it will take time to find a new provider, and also indicating its understanding that another customer, Goldwater, had apparently not received a notification letter from Winstar); WebNet Comments at 1 (requesting that the Commission delay Winstar's separation from the market until such time as WebNet is able to move its customers); Yaron Comments at 1 (requesting an extension to June 30, 2004).

[9] Letter from Lorenia Ramirez, Yaron & Associates Attorneys at Law, to Office of the Secretary, Federal Communications Commission (dated June 8, 2004) (Yaron Withdrawal Letter).

alternative services.[10] In a letter dated June 14, 2004, Grand Circle indicated that it may need an extension of service until September 30, 2004, because MCI has agreed to provide alternative services, but has indicated that digging needed for the circuit will not be able to start before August.[11] Winstar filed a response on June 14, 2004, submitting that it would incur additional costs to maintain this "back-up" service to Grand Circle beyond the original discontinuance date, but that it would comply with any order to continue services to Grand Circle to the extent the Commission deemed Grand Circle's request reasonable.[12]

4. Section 214(a) of the Communications Act, as amended, states that "[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby."[13] The primary purpose of this requirement is to reduce the harm to consumers caused by discontinuances of service, which is an important aspect of the Commission's general obligation under the Communications Act to protect and promote the public interest.[14] As the Commission has stated, "we have retained the right to delay grant of a discontinuance authorization if we believe an unreasonable degree of customer hardship would result,"[15] and will review each application to determine whether proper notice has been given, whether customers or other end users are able to

[10] *See* Letter from Brett Ferenchak, Swidler, Berlin, Shereff, Friedman, LLP, Counsel for Winstar Communications, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-154 (June 10, 2004). Winstar indicates that it: (1) has agreed not to discontinue service on June 15, 2004, to the customers that have filed, and have not withdrawn, comments in this docket; (2) has agreed to continue to provide service and work with these customers to ensure a smooth transition until they move to another carrier, or until the Commission determines that Winstar can discontinue service; (3) sent a discontinuance notice letter to Goldwater, received an LSR to port Goldwater's main billing telephone number to Focal Communications effective June 10, 2004, and agrees to accommodate Goldwater as described above until Goldwater completes its transition; (4) requests that the Commission allow for a determination that in any event customers have exceeded a reasonable period if they have not prepared to have replacement service installed by July 31, 2004; (4) has received notice from WebNet that WebNet will be off of Winstar's network by June 15, 2004, is still working with WebNet and ARIN to remedy apparent difficulties with porting the Winstar assigned IP addresses of 300 WebNet customers, and agrees to continue to make the IP addresses available to WebNet until the issue is resolved. *Id.*

[11] *See* Letter from Stuart Zimmerman, SVP, Information Systems, Grand Circle, to Rodney McDonald, Attorney, Federal Communications Commission, WC Docket No. 04-154 (June 14, 2004) (Grand Circle June 14 Letter).

[12] *See* Letter from Brett Ferenchak, Swidler, Berlin, Shereff, Friedman, LLP, Counsel for Winstar Communications, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-154 (June 14, 2004) (Winstar June 14 Letter).

[13] 47 U.S.C. § 214(a).

[14] *See* 47 U.S.C. § 201.

[15] *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, First Report and Order, CC Docket No. 79-252, 85 FCC 2d 1, 49 (1980) (*Competitive Carrier First Report and Order*).

receive service or a reasonable substitute from another carrier, and whether the public convenience and necessity is otherwise adversely affected.[16]

5. The Commission has considerable discretion in determining whether to grant a carrier authority to discontinue service pursuant to section 214.[17] Balancing the interests of the carrier and the affected user community, the Commission considers a number of factors including: (1) the financial impact on the common carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) the existence, availability, and adequacy of alternatives; and (5) increased charges for alternative services, although this factor may be outweighed by other considerations.[18]

III. DISCUSSION

6. We find that the record supports granting Winstar's request to discontinue service in accordance with its filed representations in this proceeding. Specifically, and as stated above, Winstar indicates that it has agreed to continue to provide services to DeCastro, Grand Circle, Rosenzweig, WebNet, and, if necessary, Goldwater, to facilitate these customers' transition to alternative services.[19] On the basis of Winstar's agreement and considering the five factors identified by the Commission for evaluating applications to discontinue service, we find that the proposed discontinuance will not result in an unreasonable degree of customer hardship, and, therefore, that there will be no adverse effect on the public convenience and necessity.[20]

7. Applying the first of the Commission's factors, the financial impact of continuing to provide the service for the carrier seeking to discontinue, we note that, in its application, Winstar

[16] *See* 47 C.F.R. § 63.71(a); *see, e.g., AT&T Application to Discontinue Interstate Sent-Paid Coin Service Not Automatically Granted*, Public Notice, NSD File No. W-P-D-497 (Aug. 3, 2001) (requiring AT&T to show how it will minimize the negative impact on the affected customers).

[17] *FCC v. RCA Communications, Inc.*, 73 S.Ct. 998, 1002 (1953). *See also Verizon Telephone Companies, Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, Order, WC Docket No. 02-237, FCC 03-256 (rel. Oct. 22, 2003).

[18] *Application for Authority Pursuant to Section 214 of the Communications Act of 1934 to Cease Providing Dark Fiber Service*, File Nos. W-P-C-6670 and W-P-D-364, 8 FCC Rcd 2589, 2600, para. 54 (1993) (*Dark Fiber Order*); *remanded on other grounds, Southwestern Bell v. FCC*, 19 F.3d 1475 (D.C. Cir. 1994). *See Verizon Telephone Companies, Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, Order, WC Docket No. 02-237, FCC 03-256 (rel. Oct. 22, 2003).

[19] *See* n.10, *supra* (describing Winstar's agreements with these commenters). We note that Yaron has transferred to alternative services and has withdrawn its comments in opposition to Winstar's application. Yaron Withdrawal Letter at 1.

[20] We find that this is also consistent with our evaluation in prior orders of discontinuance applications involving similar circumstances. *See In the Matter of Section 63.71 Application of LDMI Telecommunications, Inc. for Authority to Discontinue the Provision of Domestic Telecommunications Services to Payphone Service Providers in Michigan and Ohio*, Order, Comp. Pol. File No. 648, 18 FCC Rcd 11301 (rel. May 30, 2003); *In the Matter of Cable & Wireless USA, Inc. Application for Authority to Discontinue Certain U.S. Domestic Telecommunications Services*, Order, Comp. Pol. File No. 663 (rel. Dec. 12, 2003).

specifically states that it has decided to discontinue the provision of certain services in a number of locations nationwide in order to maintain long term profitability and refocus its business plan.[21] We thus find that the financial impact of continuing to provide these services for an extended period beyond the planned discontinuance date could be burdensome. Applying factors two and three, the need for the services in general and for the particular services in question, we note that commenters in this proceeding explain that the various services that they receive from Winstar are critical to their businesses.[22] Finally, considering factor four, the existence, availability, and adequacy of alternatives, the record indicates that some of the commenters may not have been able to transfer service to alternative providers within the time allowed by Winstar's originally planned discontinuance date.[23] We find, however, as noted above, that the record in this proceeding makes clear that, to the extent commenters allege they would not be able to migrate within the proposed period, Winstar has provided sufficient assurances that it will maintain service for these customers for a reasonable, additional period of time in order to allow them to migrate. Given the circumstances, we find that Winstar's request to discontinue service to DeCastro, Rosenzweig, WebNet, and, if necessary, Goldwater, no later than July 31, 2004 is reasonable given that Winstar provided notice to these customers no later than April 14, 2004, and our record does not reflect any specific request from these customers for an extension of service past July 30, 2004. We also find it reasonable to allow Grand Circle's specific request for an extension until installation of its replacement services, or until September 30 at the latest, given the importance of these back-up services, and taking into account the costs that Winstar may recover in providing this extension of service to its remaining customers. In balancing these factors, we therefore find that Winstar should be allowed to discontinue its services in accordance with its filed representations.

[21] *See* Winstar Application at 3; *see also* Winstar June 14 Letter (indicating that Winstar will incur more than $5,600/month in rental fees to maintain Grand Circle's service beyond the original planned discontinuance date, and that its current charges to Grand Circle are estimated at approximately $4,500/month).

[22] *See* DeCastro Comments at 3; Grand Circle Comments at 1; Rosenzweig Comments at 1; WebNet Comments at 1.

[23] *See* DeCastro Comments at 1-2; Grand Circle Comments at 1; Grand Circle June 14 Letter at 1; Rosenzweig Comments at 1; WebNet Comments at 1. We note that the fifth factor, increased charges for alternative services, was not raised as an issue in this proceeding.

IV. ORDERING CLAUSE

8. Accordingly, pursuant to sections 1, 4(i), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 214, and sections 0.91, 0.291, and 63.71 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 63.71, IT IS ORDERED that the application of Winstar Communications, LLC, Winstar Communications of Arizona, LLC, Winstar of Delaware, LLC, Winstar of Georgia, LLC, Winstar of Hawaii, LLC, Winstar of Indiana, LLC, Winstar of Louisiana, LLC, Winstar of Pennsylvania, LLC, Winstar of Virginia, LLC, and Winstar of West Virginia, LLC to discontinue domestic telecommunications IS GRANTED to the extent declared herein, consistent with Winstar's filed representations in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey

Michelle M. Carey
Chief, Competition Policy Division
Wireline Competition Bureau