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April 5, 2002

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BY OVERNIGHT MAIL

Blanca S. Bayo, Director
Division of Records & Recording
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 020054-TP
Emergency joint application for approval of assignment of assets and AAV/ALEC Certificate No. 4025 and IXC Certificate No. 2699 from Winstar Wireless, Inc. to Winstar Communications, LLC

Dear Ms. Bayo:

On behalf of Winstar Wireless, Inc. and Winstar Communications, LLC (together, "Applicants"), enclosed please find an original and fifteen (15) copies of Applicant's Motion to Dismiss Verizon Florida Inc.'s Petition ("Motion"). This Motion is in response to Verizon Florida Inc.'s Petition Protesting Proposed Agency Action Order Approving Assignment of Assets and Alternative Local Exchange Telecommunications and Interexchange Telecommunications Certificates filed on April 2, 2002 in the above-referenced docket.

Please date-stamp the extra copy of this filing and return it in the enclosed self-addressed, stamped envelope. Should you have any questions please do not hesitate to contact us.

Respectfully submitted,

Jean L. Kiddoo
Jean L. Kiddoo
Brett P. Ferenchak

Counsel for Applicants

AUS ___
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Enclosure

cc: Kimberley A. Bradley
Carl Billek

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the Motion to Dismiss Verizon Florida Inc.'s Petition filed by Winstar Wireless, Inc. and Winstar Communications, LLC in Docket No. 020054-TP were sent via U.S. mail (unless otherwise indicated) on April 5, 2002 to the following parties:

Staff Counsel (Docket No. 020054-TP)*
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Verizon Florida Inc.
Kimberly Caswell
P.O. Box 110, FLTC0007
Tampa, FL 33601-0110

Brett P. Ferenchak

* By overnight delivery

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re:	)	
	)	
Emergency Joint Application for Approval	)	
of Assignment of Assets and AAV/ALEC	)	Docket No. 020054-TP
Certificate No. 4025 and IXC Certificate	)	
No. 2699 from Winstar Wireless, Inc. to	)	
Winstar Communications, LLC	)	

MOTION TO DISMISS VERIZON FLORIDA INC.'S PETITION

Pursuant to Section 28-106.204 of the Florida Administrative Code, Winstar Wireless, Inc. ("Old Winstar") and Winstar Communications, LLC ("New Winstar") ("Applicants"), by their undersigned counsel, hereby move that the Commission dismiss Verizon Florida Inc.'s ("Verizon's") April 2, 2002 "Petition Protesting the Proposed Agency Action Order Approving Assignment of Assets and Alternative Local Exchange Telecommunications and Interexchange Telecommunications Certificates" ("Verizon Petition"), and that the Commission promptly issue a Consummating Order allowing the proposed agency action to become final and effective so that a transaction can be completed which the Commission finds to be in the public interest and wherein there is a smooth transition of customers from an entity in Chapter 7 bankruptcy to a new entity which the above-captioned Application demonstrated is financially qualified to operate. Moreover, Applicants respectfully request that the Commission require that Verizon meet its federal and state obligations to provide services to New Winstar pursuant to its interconnection agreement, and that it cooperate in the process that New Winstar is undertaking

to make sure that the Old Winstar bankruptcy does not result in precipitous disruption of service to Old Winstar's Florida customers.

As demonstrated herein, there are no disputed material facts with regard to the Application and, in particular, New Winstar's ability to enter into the Florida telecommunications market and provide competitive telecommunications services. In fact, it is because of New Winstar's decision to purchase the customers and certain equipment of Old Winstar out of the bankruptcy proceeding that numerous Florida customers were not precipitously disconnected without adequate notice last December as a result of Old Winstar's dire financial condition. Moreover, as envisioned in the Bankruptcy Court Sale Order,[1] New Winstar has diligently taken the steps necessary to obtain the requisite regulatory approvals and to obtain the necessary new interconnection and other agreements with underlying carriers that it needs to provide service to the customers that it acquired from the Old Winstar estate. There is no reason (other than Verizon's effort to hold the customers hostage to its attempt to compel New Winstar to assume Old Winstar's interconnection agreements and Verizon's refusal to honor the interconnection agreement that it has entered with New Winstar by provisioning the facilities necessary to serve the customers) why the transition cannot proceed smoothly and without the disruption of service that Verizon threatens.

The representations made by Verizon to support its Petition are without merit and are simply a blatant attempt to undermine the orderly transition process established by the Bankruptcy Court. Specifically, Verizon is attempting to lure the Commission into inserting

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[1] *In re: Winstar Communications, Inc. et al., Order Authorizing (i) Sale of Certain of the Debtors' Assets Free and Clear of Liens, Claims Encumbrances, and Interests, (ii) Approving Cure Amounts with Respect to Certain Executory Contracts and Unexpired Leases, (iii) Authorizing the Debtors to Enter into and Approving Management Agreement, (iv) Approving Regulatory Transition Process and (v) Granting Related Relief,* Case No.: 01-1430 (JJF) (Dec. 19, 2001) (hereinafter, "Sale Order"). The Sale Order and Management Agreement are attached hereto as Exhibits A and B, respectively.

itself into the role of a bankruptcy court as to a buyer's obligation to assume or reject a debtor's executory contracts under the Sale Order and the Federal Bankruptcy Code, and thereby to permit Verizon to delay the orderly transition of the customers, and by imposing unreasonable and discriminatory conditions on New Winstar as it commences service in the state.[2] And, in so doing, Verizon implicitly asks the Commission to permit it to shirk its federal and state obligations to provide service to New Winstar, and to condone an artificial and unnecessary "disconnect and reconnect" scenario. Applicants therefore object to Verizon's Petition and request that the Petition be summarily dismissed by the Commission.

Background

As noted in the Joint Application filed on January 16, 2002 ("Application"), Winstar Wireless, Inc. ("Old Winstar"), a Delaware company, filed for bankruptcy on April 18, 2001.[3] During that process, it became apparent that Old Winstar would not be able to reorganize and emerge out of bankruptcy. As a result, the Old Winstar estate conducted an auction on December 4, 2001, which ultimately failed to produce a purchaser of the acceptable to the creditors of the estate. In the meantime, Old Winstar had received notices from several utilities of their intent to disconnect service, which would have resulted in the loss of service to customers without the adequate notice that would have enabled the customers to seek and obtain other arrangements.

On December 10, 2001, in order to avoid serious disruption in telephone service and significant harm to customers, the Bankruptcy Court ordered the utilities, including Verizon, to continue providing service to Old Winstar for an additional week during which the creditors

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2 Sale Order at 17-19, para 23.

could continue discussions with potential purchasers. A week later, on December 17, 2001, no successful purchaser had emerged and it appeared that more drastic measures would need to be undertaken by the Bankruptcy Court to avoid precipitous disruption of service to thousands of Old Winstar local, long distance and high speed Internet service residential, business, and government customers, including customers whose disconnection would threaten national security and public safety. It was at this time that New Winstar approached the estate and offered to purchase the assets and customers of Old Winstar, thereby avoiding the disaster that would have occurred as a result of disconnecting customers without adequate notice. Indeed, but for New Winstar's intervention, Verizon and other carriers would have been faced with an uncoordinated and massive scramble to accommodate thousands of customers whose service had been precipitously disrupted as a result of Old Winstar's demise, instead of the coordinated and orderly transition that New Winstar has followed. Moreover, to prevent the massive harm to the residential, business and government customers in such a circumstance, it is even likely that the Bankruptcy Court and/or regulators would have intervened to prevent Verizon from disconnecting the customers, thereby exacerbating the uncollectible amounts that Verizon is owed by the bankrupt estate.

The Sale Order entered by the Bankruptcy Court to approve the sale of assets to New Winstar provided for a process by which the customers and relevant assets would be transitioned to New Winstar *without disruption.* The Sale Order expressly recognized the regulated environment that the Old Winstar assets are operated in, and the critical need to "ensure the uninterrupted provision of services to customers of [Old Winstar] ... during the period in which

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[3] Old Winstar converted its estate to a Chapter 7 on January 24, 2002, and continues to operate under the protection of the U.S. Bankruptcy Code before the U.S. District Court for the District of Delaware. *See* Chapter 7 Case No. 01-01430 (JCA) (Bankr. D. Del.).

[New Winstar] and [Old Winstar] seek to comply with the applicable federal and state regulatory laws and to enter into contractual or other legal arrangements necessary for the consummation of the Sale, the transfer of the [Old Winstar regulatory authorizations] to New Winstar and other operation of the Purchased Assets by [New Winstar]....[4] Furthermore, Paragraph 23 of the Sale Order clearly set forth the process by which the transition would be undertaken, including payment to utilities, including Verizon, *in advance and on a weekly basis*, their charges for the underlying services used to operate the Old Winstar business following the entry of the Sale Order.[5] Verizon was expressly deemed by the Sale Order to have consented to its terms by virtue of the fact that it did not object to the Sale Order in the Bankruptcy Court.[6]

The Sale Order was approved by the Bankruptcy Court on December 19, 2001. New Winstar has subsequently met its obligations to Verizon in advance and on a weekly basis throughout the transition period following the Sale Order (payment terms that Verizon probably does not receive from any other carrier), thus unquestionably disproving Verizon's claim that New Winstar is not financially qualified. In addition, it has diligently pursued the requisite federal and state regulatory approvals needed to transfer the customers, and the interconnection and other arrangements needed for it to provide service to them.

The Verizon Petition Must Be Dismissed or Denied

Verizon states that grant of its Petition is "necessary because there are disputed material facts with regard to New Winstar's ability to continue to provide uninterrupted service to Old

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4 Sale Order at 7, para. M.

5 Specifically, the Sale Order directed that "New Winstar shall be responsible for, and is directed to pay on a timely basis, all charges incurred for services used by [Old Winstar] to provide services to the Customers from the Closing Date to the Cutoff Date, including all charges incurred with respect to Service Providers [defined to include, among others, common carrier service providers that provide services to Old Winstar]." Sale Order at 17, para. 23.

6 Sale Order at 6, para. L.

Winstar's customers and its financial capability to meet its ownership obligations." Verizon Petition at 1. Federal and state law, as well as past operating practice and experience and the facts of this present case, refute Verizon's claims of disputed material facts. Moreover, Verizon makes no effort whatsoever to support its effort to have the Commission decide questions of bankruptcy law by compelling New Winstar to make a particular election under the Bankruptcy Code and Sale Order as to the assumption or rejection of Old Winstar's contracts. Clearly, New Winstar's and Verizon's respective rights and obligations under the Sale Order are a matter for the Bankruptcy Court to determine, and Verizon should not be permitted to make an end run around the Sale Order and the Bankruptcy Court's jurisdiction. Indeed, the Sale Order expressly provides that:

> [t]his Court retains and shall have exclusive jurisdiction to endorse and implement the terms and provisions of the Asset Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith (including the Management Agreement) in all respects, including, but not limited to, retaining jurisdiction to ... (d) interpret, implement, and enforce provisions of the Asset Purchase Agreement *and this Sale Order*.[7]

The Bankruptcy Court thus clearly retained jurisdiction over the Sale Order, and therefore over the questions as to the appropriateness of assumption or rejection of the Verizon agreements and over Verizon's continuing obligations under the terms of the Sale Order to provide service during the transition process. That is not to say, however, that this Commission is without its own jurisdiction to compel Verizon to fulfill its obligations under the Telecommunications Act of 1996, 47 U.S.C. §151 et. seq. (the "Federal Telecom Act") and Florida law to provide timely service to New Winstar under its own interconnection arrangements with Verizon. As shown below, New Winstar has diligently pursued its rights in this regard, and Verizon should not be permitted to use its control over the local network to

[7] Sale Order at 14, para. 15 (emphasis added).

impede this process by imposing unnecessary and extremely damaging "disconnect and reconnect" scenarios which disrupt the critical local, long distance and high speed Internet access services of the customers.

Furthermore, as shown below, Verizon's Petition is without support insofar as it requests that the Commission impose discriminatory escrow obligations and give unilateral disconnection rights to Verizon. This argument attempts to impute to New Winstar the payment history of a totally unrelated company when New Winstar has faithfully honored its obligation to pay for services in advance and on weekly basis during the transition period since December and has demonstrated its financial qualifications in its Application to the Commission.

Verizon should not be permitted to hold the Old Winstar customers hostage to its effort to revisit the process established by the Bankruptcy Court or to shirk its legal obligations to provision service under New Winstar's interconnection agreements. New Winstar therefore respectfully submits that the Commission should promptly and summarily dismiss Verizon's Petition and order it to proceed immediately to honor its interconnection agreement with New Winstar and transition the circuits needed to serve New Winstar's customers to that arrangement.

1. Applicants Have Diligently Fulfilled Their Obligations to Seek the Required Regulatory Approval to Acquire the Assets and Provide Service in Florida, and to Transition the Underlying Facilities Used to Serve the Customers to New Interconnection Arrangements Established by New Winstar with Verizon and Other Carriers

Verizon is required to provide service to New Winstar under federal and state law. The Federal Telecom Act restructured local telephone markets in order to permit the entry and operation of competitive carriers. In effect, the Federal Telecom Act requires monopoly incumbent telephone providers, including Verizon, to make their network infrastructure available to other telecommunications carriers on a non-discriminatory "common carrier" basis.

Accordingly, the Federal Telecom Act and Florida law require Verizon to provide access to, and interconnection with, other telecommunications carriers, including New Winstar.[8] By law, therefore, New Winstar has a right to use the telephone network of Verizon to provide service to its own customers, whether those customers were obtained through its own marketing or purchased from another carrier.

Although Verizon does not directly dispute that it has an obligation to provide services to New Winstar under its own interconnection arrangements, Verizon's Petition repeatedly claims that New Winstar's failure to assume the Old Winstar interconnection agreements will necessarily result in a disruption in service to customers. This is simply not true. Customers change carriers all the time without any interruption in service and without the new carrier being required to assume or adopt the interconnection agreements, tariffs or outstanding debt of the previous carrier. Furthermore, in the past few years, competitive carriers have entered into agreements whereby one carrier sells to another carrier the right to serve a large number of customers ("customer base transfer"). ILECs routinely migrate the customer base from one competitive carrier to another without the purchasing carrier assuming, or even adopting, the interconnection agreements or tariffs of the selling carrier. These customer base transfers do not result in service interruptions to customers, particularly where, as here, the acquiring carrier has also acquired the switching and other transmission equipment of the seller, and the only effort required by the ILEC is to make "back office" changes in billing and other records rather than taking any physical effort or steps to make the change.

Therefore, Applicants believe that Verizon's threat to interrupt service if New Winstar requests transition of customers from Old Winstar without having assumed Old Winstar's

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8 *See* Telecommunications Act of 1996, 47 U.S.C. §251(a), (c); Section 364.16(3) of the Florida Statutes, FLA. STAT. ANN. § 364.16 (West 1999).

interconnection agreements represents an abuse of its control over the telecommunications network for the purpose of holding the customers hostage while it attempts to extract from New Winstar the monies owed it by a carrier that is in Chapter 7 bankruptcy. The true nature of Verizon's threat is most clearly illustrated by its argument that:

> [i]f the current contracts and arrangements are not assumed and assigned, they will be cancelled. The circuits and other facilities used to provide those services will revert back to Verizon's inventory for use by other customers. If New Winstar places new orders or seeks new arrangements, those requests will be handled in order. During that time there will be no service to New Winstar.[9]

The Commission should not condone Verizon's blatant attempt to use its control of the network to impede the transition and should not accept Verizon's position that circuits that are already in place, and for which Verizon simply needs to make back office billing changes in order to complete the provisioning process, would somehow need to be disconnected and placed in some artificial "inventory" status while New Winstar waits for the circuits to be provisioned to it. Such a position is directly contrary to the admonition of the Federal Communications Commission ("FCC") to all carriers when faced with situations where customers are threatened with disruption of critical services. The FCC "expect[s] that ILECs, in cooperation with CLECs and IXCs, will work toward developing streamlined order processing systems to enable circuit migration to take place on a large–scale basis rather than singly. Such streamlined order processing systems will avoid service disrupting 'disconnect' and 'reconnect' scenarios with the attendant risks of failure and delay."[10]

Notwithstanding the FCC's position, and the fact that in this case there is no need for any Verizon to make any physical changes to the services whatsoever in order to provision them to

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[9] Verizon Petition at 2.

[10] *Requirements for Carriers to Obtain Authority Before Discontinuing Service in Emergencies*, DA 01-1257, NSD File No. W-P-D-488 (May 22, 2001).

New Winstar, Verizon states that "if New Winstar places new orders or seeks new arrangements" those orders will go into a queue. Verizon Petition at 2. As Verizon well knows because it signed it, New Winstar has already entered into a new agreement with Verizon. Moreover, New Winstar has already submitted orders for circuits to serve the customers that it is acquiring from Old Winstar. Therefore, the only impediment to the timely completion of that effort would be Verizon's own unilateral decision to slow down that process through the type of artificial delaying tactics outlined in the Petition.[11] It is plain that Verizon is asserting form over substance in this matter in an attempt to frustrate the orderly process envisioned by the Sale Order and therefore to place itself ahead of all other unsecured creditors of the Old Winstar estate.[12]

In an attempt to support its assertion that if New Winstar rejects Old Winstar's contracts the circuits will be disconnected, Verizon points to a filing made by the Massachusetts Department of Telecommunications and Energy ("DTE") in another bankruptcy proceeding. Verizon Petition at 2-3. As a threshold matter, as the Petition concedes, the Massachusetts DTE

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[11] In accordance with the Sale Order, New Winstar has spent several months filing the necessary applications and making requests to Verizon to enter the Florida telecommunications market. On January 28, 2002, New Winstar filed a request with Verizon to adopt an interconnection agreement. Since that time, New Winstar and Verizon have fully executed an interconnection agreement. On February 26, 2002, New Winstar also submitted a request to provision circuits in order to serve those customers that Winstar purchased and would ultimately serve. While New Winstar sought to provision these circuits under New Winstar's interconnection agreements, the circuits are already in place and will therefore require minimal effort for Verizon to provision. Verizon's filing of a last minute Petition to stall this process is particularly troubling given its full knowledge of the Sale Order requirements and its effort to seem to be cooperating with that process until the eleventh hour in order to gain an advantage by using the customers as leverage.

[12] Applicants also take issue with the implication in Verizon's Petition that "if the current contracts and arrangements are not assumed or assigned" then service will immediately be discontinued. As noted above, New Winstar is obligated under the Sale Order and Management Agreement adopted by the Bankruptcy Court to pay, in advance on a weekly basis, all newly-accruing actual costs and expenses of the ongoing operations of the [Old Winstar] business during transition process. Absent a default of that obligation, the contracts with suppliers such as Verizon will remain in effect pursuant to the terms of the Sale Order, and any dispute about the obligations that New Winstar and Verizon have under the Sale Order is a matter for the Bankruptcy Court to decide. Sale Order at 17, para. 23(c) and (d).

filing it relies upon was made *to the Bankruptcy Court* for a ruling as to the debtor's and buyer's obligations under the sale order in that case and the Bankruptcy Code – and yet Verizon would have it that this Commission should insert itself into the role of the Bankruptcy Court in this case and issue an order compelling New Winstar to assume Old Winstar's contracts. Should New Winstar choose to reject Verizon's agreements with Old Winstar, it will be required to file a motion to do so in the Bankruptcy Court and, as in the Net2000 case relied upon in Verizon's Petition, that is precisely the jurisdiction where any ruling that Verizon seeks as to assumption and rejection of contracts should be made.

Moreover, the Net2000 case does not provide any support whatsoever for Verizon's position. The sale order in that case did not contain any of the processes and procedures adopted in the Sale Order in the Old Winstar case for an orderly transition process. Indeed, in a subsequent bankruptcy case, the Massachusetts DTE and the New York Public Service Commission ("New York PSC") argued for imposition of a sale order that specifically "establish[es] a 'Regulatory Compliance Period' for [the] Debtor as was established by the United States Bankruptcy Court District of Delaware for Winstar Communications, Inc."[13]

Even more significantly, in that same subsequent Network Plus case, the New York PSC squarely opposed Verizon's effort to compel the debtor to assume or reject contracts between the debtors and Verizon and took issue with Verizon's claim that "should the Debtor reject any of the Verizon agreements, Verizon would have the right to terminate all services that it provides to Debtor." As the New York PSC pointed out, that "provision is inconsistent with New York's requirements that Verizon must provide 30 days notice prior to terminating local service." That same factor is relevant here, where, for example, the Old Winstar interconnection agreement

[13] *In re: Network Plus Corp.*, Case No. 02-10341 (Bankr. D. Del. 2002) ("Network Plus").

with Verizon that is required by the Bankruptcy Court to continue in effect during the transition (so long as New Winstar does not default on payments) provides that termination can occur upon default only after the "non-defaulting party notifies the defaulting party in writing of the alleged default and that the defaulting party does not cure the alleged default within sixty (60) calendar days of receipt of written notice thereof." Similarly, Verizon's access tariff requires that a carrier be delinquent in payment before Verizon can disconnect service and, even then, Verizon must provide 30 days notice to the carrier.[14]

The New York PSC also pointed out, in opposing Verizon's motion in the Network Plus case, that "if a contract is rejected, then the rights that a purchaser would have under a new interconnection agreement or tariff should be left to state law." And, in the case of another bankrupt carrier, the New York PSC specifically rejected precisely the relief that Verizon is requesting here, finding that a buyer of the assets of a bankrupt telecommunications company is entitled to exercise its rights to obtain tariffed services in it own right without having to assume and/or "cure" the debts of the seller. Specifically, in connection with the Telergy bankruptcy, the New York PSC found that:

> [t]he sole issue before the Commission is one of tariff interpretation. That is, can a telecommunications carrier that acquires fiber optic cable and associated telecommunications facilities currently installed in, on, along, though, and across Con Edison's rights-of-way, poles, conduits, ducts and other properties and facilities obtain the right of access to such rights-of-way and facilities from Con Edison pursuant to the Tariff? The Commission has not been asked to, and will not, decide any of the issues pending before the Bankruptcy Court or the New York Supreme Court, New York County, with respect to Con Edison's rights as a creditor and lienholder, respectively.
>
> The Tariff was intended and designed to promote non-discriminatory access to Con Edison's rights-of-way and facilities by telecommunications carriers at the same or similar rates. While the Tariff generally anticipates carriers seeking access to Con Edison's system and then installing telecommunications facilities, it does not preclude

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[14] Section 2.1.8 of the GTE Florida Facilities for Intrastate Access Tariff, Third Revised Page 3 (eff. Feb. 5, 1997).

> carriers from acquiring existing facilities from other companies and using Con Edison's rights-of-way and facilities. Indeed, the Tariff is clear that any telecommunications carrier using Con Edison's system is required to pay annual rent computed at the rates specified therein. Accordingly, provided an entity obtains ownership of the Telergy assets, and the necessary approvals to own and operate the assets (including but not limited to authorization from the Commission and franchises from all applicable municipalities), it shall be entitled to obtain, pursuant to the Tariff, a non-exclusive license from Con Edison for access to Con Edison's rights-of-way and facilities.
>
> While Con Edison may have legitimate claims against Telergy for the arrears, the Tariff neither expressly requires nor implies that a telecommunications carrier acquiring Telergy's (or any other company's) assets is required, as a condition to receiving the license, to reimburse Con Edison for Telergy's arrears. As the Commission has previously observed, the dispute between Con Edison and Telergy properly belongs in the judicial arena. This ruling is not intended to pass judgment or opine on the veracity of Con Edison's contract, lien or bankruptcy claims, nor should it be construed as doing so.[15]

The facts of that Telergy case are remarkably similar to those raised by the Verizon Petition, and the Commission should be equally clear about the obligations of Verizon to provide service to New Winstar under its tariff without paying the pre-existing debts of another company, and as to the fact that Commission's jurisdiction does not extend to questions of Verizon's rights as a creditor pursuant to the Sale Order and the Bankruptcy Code.

2. Verizon Provides No Support Whatsoever for Its Request That the Commission Impose Discriminatory Requirements on New Winstar

Conditions 2 (an escrow of an amount equal to 6-months billings) and 3 (a unilateral right on Verizon's part to terminate contacts with New Winstar) requested by Verizon are not supported by any evidence whatsoever that New Winstar is not financially qualified to provide services in Florida. In support of these conditions, Verizon summarily states that "[t]he Applicants have failed to make the requisite showing of financial ability to take on Old Winstar's

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[15] Petition of Dominion Telecom, Inc. for a Declaratory Ruling on the Scope and Application of Consolidated Edison Company of New York, Inc.'s Tariff Applicable to Telecommunications Companies Seeking to Install Telecommunications Cable in Consolidated Edison Service Territory, Case No. 02-M-0197at 6-7 (Feb. 22, 2002) (footnotes omitted and emphasis added). A copy of the New York PSC Order is attached hereto as Exhibit C.

obligations." Verizon Petition at 3-4. That statement is not supported by any facts presented by Verizon, nor is it supportable. Verizon does not provide any evidence that New Winstar is not financially qualified to maintain service and to meet its obligations. Instead, Verizon simply attempts to impute to New Winstar the financial problems of Old Winstar. New Winstar, however, is a completely separate company from Old Winstar and had no connection to it prior to acquiring certain of its assets in December 2001. Moreover, New Winstar presented evidence of its financial qualification in the Application. By finding that Applicants complied with the Commission's rules to assign the certificates, the Commission determined that the transfer was in the public interest, and Verizon has not presented any issue of fact whatsoever, material or otherwise, that contradicts that finding.

Conditions 2 and 3 are also discriminatory because they would place requirements on New Winstar that are not imposed on other carriers. Indeed, these conditions are not present in the interconnection agreement that New Winstar has entered with Verizon itself. By unilaterally modifying the interconnection agreement and placing New Winstar in a different position as to other carriers, these conditions would arbitrarily and unreasonably discriminate against New Winstar.

Hearing

Verizon states that it does not believe that a hearing is necessary (Verizon Petition at 5), and Applicants agree – because the first condition that Verizon has urged is wholly within the purview of the Bankruptcy Court, and because it has not provided any support whatsoever for the discriminatory imposition of its requested conditions 2 and 3. However, if the Commission believes that hearings are necessary to examine any of these issues, than Applicants respectfully

request that they be scheduled immediately so as not to permit Verizon to succeed in delaying the transition any longer than it already has.

Conclusion

As stated above, Verizon has not presented any disputed material facts with regard to the Application. Further, the representations made by Verizon to support its Petition are without merit and are simply a blatant attempt to undermine the orderly transition process established by the Bankruptcy Court. Applicants therefore object to the Verizon Petition and request that the Commission deny or dismiss the Verizon Petition and issue a Consummating Order so that the transaction can be completed with a smooth transition of customers.

Respectfully submitted,

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COUNSEL FOR APPLICANTS

Dated: April 5, 2002

<u>EXHIBIT A</u>

SALE ORDER

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
WINSTAR COMMUNICATIONS, INC., et al.,	:	Case No.: 01-1430 (JJF)
	:	Jointly Administered
Debtors.	:	

ORDER AUTHORIZING (i) SALE OF CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS ENCUMBRANCES, AND INTERESTS, (ii) APPROVING CURE AMOUNTS WITH RESPECT TO CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (iii) AUTHORIZING THE DEBTORS TO ENTER INTO AND APPROVING MANAGEMENT AGREEMENT, (iv) APPROVING REGULATORY TRANSITION PROCESS AND (v) GRANTING RELATED RELIEF

This matter having come before the court on (l) the motion (the "Original Motion"; terms not otherwise defined in this Sale Order shall have the meanings ascribed to such terms in the Original Motion) filed by Winstar Communications, Inc. and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"), requesting the entry of (A) an order pursuant to sections 363(b) and 105(a) of title 11, United States Code (the "Bankruptcy Code") and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") (i) approving bidding procedures, including bid protections, (ii) approving the form and manner of notice of (a) the hearing to consider granting certain bid protections (the "Bid Procedures Hearing"), (b) the hearing on the sale of certain of the Debtors' assets (the "Sale Hearing"), (c) proposed cure payments and (d) assumption and assignment of executory contracts and unexpired leases, and (iii) scheduling the Sale Hearing,

and (B) an order authorizing and approving (i) the sale of certain of the Debtors' assets free and clear of liens, claims and encumbrances (the "Sale") and (ii) the assumption and assignment of certain executory contracts and unexpired leases, and (II) the supplement to the Original Motion filed with the Bankruptcy Court on December 14, 2001 (the "Motion Supplement", and together with the Original Motion, the "Motion") seeking entry of an order (i) authorizing the Debtors to enter into, and approving, a management agreement substantially in the form annexed to the Motion Supplement as Exhibit A (the "Management Agreement"), (ii) approving, and authorizing the Debtors to implement, the Debtors' proposed regulatory transition process (the "Regulatory Transition Process") and (iii) granting related relief, including an extension of the period under Bankruptcy Code section 365(d)(4) within which the Debtors may decide whether to assume or reject unexpired leases of nonresidential real property; and the Court having conducted a hearing on November 27, 2001, and having entered an order dated November 27, 2001 approving the Bidding Procedures; and an auction having been held at the offices of Shearman & Sterling, counsel to the Debtors, on December 5, 2001, in accordance with the Bidding Procedures previously approved by this Court; and following the conclusion of the Auction, the Debtors, in consultation with their financial advisors, and after consultation with counsel to each of the Creditors' Committee, the Agent for the Prepetition Lenders and the Agent for the DIP Lenders, having (i) reviewed each bid on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the Sale, and (ii) identified the bid of IDT Winstar Acquisition, Inc. (the "Buyer"), as set forth in the Asset Purchase Agreement, dated as of December 18, 2001 (the "Asset Purchase Agreement") as the highest and best offer for the Purchased Assets (as defined below in Paragraph H) at the Auction (the "Successful Bid"); and a hearing on the Motion

having been commenced on December 10, 2001 and continued on December 17, 2001 and December 18, 2001 (the "Sale Hearing"); and all interested parties having been afforded an opportunity to be heard with respect to the Motion; and the Court having reviewed and considered (i) the Motion, (ii) the objections thereto, if any, and (iii) the arguments of counsel made, and the evidence proffered or adduced at the Sale Hearing; and it appearing that the relief requested in the Motion and approval of the Sale of the assets to be acquired under the Asset Purchase Agreement (as defined therein, the "Purchased Assets") and the entry of an order approving the Sale (this "Sale Order") is in the best interests of the Debtors, their estates, creditors, and other parties in interest; and upon the record of the Sale Hearing, and these cases; and after due deliberation thereon; and good cause appearing therefor, it is hereby

FOUND AND DETERMINED AS FOLLOWS:[1]

A. This Court has jurisdiction over the Motion and the transactions contemplated by the Motion pursuant to 28 U.S.C. §§157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(M). Venue of these cases and the Motion is proper pursuant to 28 U.S.C. §§1408 and 1409.

B. The statutory predicates for the relief sought in the Motion are sections 105, 363 and 365 of 11 U.S.C. §§101 et seq. (the "Bankruptcy Code") and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure.

C. As evidenced by the affidavits of service previously filed with the Court, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate and sufficient notice of the Motion, the Sale Hearing, the Cure Notices, the Sale of the Purchased

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[1] Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed.R Bank.P. 7052

Assets and of the related transactions contemplated thereby (including without limitation the entry of the Debtors into the Management Agreement and the implementation of the Regulatory Transition Process) has been provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure; (ii) such notice was reasonable, sufficient, and appropriate under the circumstances; and (iii) no other or further notice of the Motion, the Sale Hearing, the Cure Notices, the Sale of the Purchased Assets and all the related transactions contemplated thereby (including without limitation the entry of the Debtors into the Management Agreement and the implementation of the Regulatory Transition Process) shall be required.

D. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested in the Motion has been afforded to all interested persons and entities, including (i) counsel for the Buyer, (ii) counsel for The Bank of New York, as Agent under the Pre-Petition Credit Agreement, (iii) counsel for Citibank, N.A., as agent under the DIP Credit Agreement, (iv) counsel for the Official Committee of Unsecured Creditors (the "Creditors' Committee"), (v) the Office of the United States Trustee, (vi) each party identified by the Debtors as a potential Buyer of the Purchased Assets that was contacted as part of the Sale process, (vii) all entities known to have any asserted lien, claim, encumbrance, alleged interest in or with respect to the Purchased Assets, (viii) all applicable federal, state and local taxing authorities; and (ix) all other entities that have filed requests for notices pursuant to Bankruptcy Rule 2002.

E. The Debtors (i) have full corporate power and authority to execute the Asset Purchase Agreement and all other documents contemplated by the Motion, (ii) have all of the corporate power and authority necessary to consummate the transactions contemplated by the

Motion and the Asset Purchase Agreement and (iii) have taken all corporate action necessary to authorize and approve the Sale and the consummation by the Debtors of the transactions contemplated thereby.

F. The Debtors have demonstrated sound business justifications for the Sale and the other transactions and actions contemplated by the Motion pursuant to section 363(b) of the Bankruptcy Code.

G. Each of the Sale, the Management Agreement and the Asset Purchase Agreement were negotiated, proposed and agreed to by the Debtors and the Buyer as parties thereto without collusion, in good faith, and from arm's-length bargaining positions. The Buyer is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such is entitled to all of the protections afforded thereby.

H. The consideration provided by the Buyer for the Purchased Assets (i) is fair and reasonable, (ii) is the highest or otherwise best offer for the Purchased Assets and (iii) will provide a greater recovery for the Debtors' creditors and other interested parties than would be provided by any other practically available alternative.

I. The transfer of the Purchased Assets to the Buyer under the Sale and the Asset Purchase Agreement will be a legal, valid, and effective transfer of such Purchased Assets, and will, upon the occurrence of the Closing (as defined in the Asset Purchase Agreement), vest in the Buyer all right, title and interest of the Debtors in the Purchased Assets free and clear of all Encumbrances and interests other than the Permitted Encumbrances (in each case, as defined in the Asset Purchase Agreement) (collectively, the "Interests") including, but not limited to, those (i) that purport to give to any party a right or option to give any of the foregoing in the future, any sale or contingent sale or title retention agreement or lease, or termination of the Debtors' or

the Buyer's interest in the Purchased Assets, or any similar rights, and (ii) relating to taxes arising under or out of, in connection with, or in any way relating to the operation of the Debtors' businesses prior to the Closing Date (as defined in the Asset Purchase Agreement).

J. The transfer of the Purchased Assets to the Buyer free and clear of all Interests will not result in any undue burden or prejudice to any holders of any Interests since all such Interests of any kind or nature whatsoever shall attach to the net proceeds of the Sale (the "Sale Proceeds") in the order of their priority, with the same validity, force and effect which they now have as against the Purchased Assets, subject to the Carveout (as defined in the Final Order Authorizing Debtors In Possession to Enter Into Post-Petition Credit Agreement and Obtain Post-Petition Financing Pursuant to Section 363 and 364 of the Bankruptcy Code, and Providing Adequate Protection and Granting Liens, Security Interests and Superpriority Claims, dated May 14, 2001 and entered in these cases) and to any claims and defenses the Debtors or other parties may possess with respect thereto.

K. The Buyer would not consummate the transactions contemplated by the Sale, thus adversely affecting the Debtors, their estates, and their creditors, if the Sale of the Purchased Assets to the Buyer was not free and clear of all Interests of any kind or nature whatsoever, or if the Buyer would, or in the future could, be liable for any such Interests and if the assignment of the Purchased Assets could not be made under section 363 of the Bankruptcy Code.

L. The Debtors may sell the Purchased Assets free and clear of all Interests of any kind or nature whatsoever because, in each case, one or more of the standards set forth in section 363(f) of the Bankruptcy Code has been satisfied. Those (i) holders of Interests and (ii) non-debtor parties who did not object, or who withdrew their objections, to the Sale, the Sale of the Purchased Assets or the Motion are deemed to have consented pursuant to Bankruptcy Code

section 363(f)(2). Those holders of Interests fall within one or more of the other subsections of Bankruptcy Code section 363(f) and are adequately protected by having their Interests, if any, attach to the proceeds of the Sale ultimately attributable to the property against or in which they claim or may claim an Interest. Notwithstanding anything contained herein or in the Asset Purchase Agreement to the contrary, the Sale of the Purchased Assets is subject to the consent of the DIP Lenders.

M. Due to the regulated environment in which certain of the Purchased Assets are operated, the entry of this Sale Order is necessary to ensure the uninterrupted provision of services to customers of the Debtors (the "Customers") during the period in which the Buyer and the Debtors seek to comply with the applicable federal and state regulatory laws and to enter into contractual or other legal arrangements necessary for the consummation of the Sale, the transfer of the Licenses (as defined below) to the Buyer and the operation of the Purchased Assets by the Buyer (the "Compliance Items").

N. Approval at this time of the Sale, the Asset Purchase Agreement and the Management Agreement, and all the transactions contemplated thereby and hereby (including the Regulatory Transition Process) is in the best interests of the Debtors, their creditors, their estate and other parties in interest.

NOW THEREFORE, BASED UPON THE FOREGOING FINDINGS OF FACT, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, EFFECTIVE IMMEDIATELY, THAT:

1 The Motion is granted, as further described herein.

2. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are overruled on the merits, provided, however, that nothing herein shall alter or impair the rights of any party

that has filed and served a timely objection to dispute the amount of a cure payment listed on an applicable Cure Notice, which rights are specifically reserved and which disputes shall be resolved either consensually or, as necessary, by further order of the Court. Notwithstanding anything in the Motion, the Asset Purchase Agreement or this Sale Order to the contrary, the Debtors shall not be authorized to assume and assign any executory contract(s) between any of the Debtors and the United States General Services Administration (the "GSA") without the prior consent of a person authorized to act on behalf of the GSA to the extent such consent is required by any contract or applicable law.

3. The Asset Purchase Agreement substantially in the form attached as Exhibit A to the Notice of Filing of Asset Purchase Agreement, dated December 18, 2001 (including all exhibits, schedules and annexes thereto), and all of the terms and conditions thereof, are hereby approved.

4. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors are authorized to consummate the Sale of the Purchased Assets, pursuant to and in accordance with the terms and conditions of the Asset Purchase Agreement, to enter into the Management Agreement and to implement the Regulatory Transition Process.

5. The Debtors are authorized to execute and deliver, and are empowered to perform under, consummate and implement, the Asset Purchase Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Asset Purchase Agreement (including the Management Agreement), and to take all further actions as may be requested by the Buyer for the purpose of assigning, transferring, granting, conveying and conferring to the Buyer or reducing to possession, the Purchased Assets, or as may be necessary or appropriate to the performance of the obligations as contemplated by

the Asset Purchase Agreement, including without limitation the implementation of the Regulatory Transition Process. Notwithstanding anything in the Motion, the Asset Purchase Agreement or this Sale Order to the contrary, the Buyer assumes no employee liabilities that arose prior to the Closing Date, including any accrued but unbilled liabilities.

6. The transfer of the Purchased Assets to the Buyer pursuant to, and subject to the terms of, the Asset Purchase Agreement shall constitute a legal, valid and effective transfer of the Purchased Assets, and shall, upon the occurrence of the Closing, vest in the Buyer all right, title and interest of the Debtors in and to the Purchased Assets to be acquired by such Buyer free and clear of all Interests of any kind or nature whatsoever, with all such Interests to attach to the Sale Proceeds in the order of their priority, with the same validity, force and effect which they now have as against the Purchased Assets, subject to the Carveout and to any claims and defenses the Debtors or other parties may possess with respect thereto.

7. In consideration for the Purchased Assets, and subject to the terms and conditions of the Asset Purchase Agreement, the Buyer shall assume the Assumed Liabilities (as defined therein) and, on the Closing Date, shall irrevocably (i) pay, at the Debtors' election, exercised prior to the Closing Date, (x) an amount in cash equal to $38,000,000 (the "Cash Payment") or (y) an amount in cash equal to $30,000,000 and cause to be issued to the Debtors a number of shares of Class B common stock of IDT Corporation, having a value equal to $12,500,000 based on the average closing price of such stock during the seven trading day period ended December 14, 2001 (the "IDT Shares", and together with the $30,000,000, the "Cash/Stock Payment"), and (ii) issue to the Debtors such number of shares of common stock of the Buyer, representing 5% of the outstanding shares of Buyer Common Stock as of the date hereof, all in accordance with the terms and conditions of the Asset Purchase Agreement.

Pursuant to the Escrow Agreement (as defined in the Asset Purchase Agreement), which is hereby approved, on or before the date of this Sale Order, the Buyer shall deliver or shall have delivered the Cash Payment to the Escrow Agent (as defined in the Asset Purchase Agreement) to be held in escrow pending Closing. On the Closing Date, the Debtors and the Buyer shall instruct the Escrow Agent to promptly release the Escrow Amount (as defined in the Asset Purchase Agreement) to an account or accounts designated by the Debtors, on behalf of the Debtors in accordance with the terms of the Escrow Agreement. Such account shall be an interest-bearing account in the name of one or more of the Debtors established at Citibank, N.A. for the purpose of receiving such funds (the "Proceeds Account"). The Sale Proceeds shall be maintained in the Proceeds Account and shall not be distributed to any party in interest, including professionals and secured parties, pending further order of the Court following notice and a hearing. Accrued interest on such funds shall constitute part of the Sale Proceeds available for distribution. The Buyer shall have no claim whatsoever to or against any of the funds in the Proceeds Account or to the IDT Shares or the Buyer Common Stock subsequent to the Closing. Any allocation of the Purchase Price agreed to by the Debtors and the Buyer shall not be binding on any other party.

8. On the Closing Date, the Buyer and the Debtors shall enter into the Management Agreement, and the Buyer shall deposit into an account at Citibank, N.A. (the "Operating Account") an amount in cash equal to $60 million in immediately available funds, to be used from and after the Closing Date through and including the Cutoff Date (as defined in the Management Agreement) exclusively to pay all costs set forth in subsection 3.1(a) of the Management Agreement. In the event that the Buyer shall fail to pay, as and when due, any such costs and the Debtors shall be held liable therefore, the Buyer hereby agrees to indemnify the

Debtors for all such costs. In the event that any funds shall be on deposit in the Account (as defined in the Management Agreement) after the Cutoff Date, and all accrued and unpaid costs required to be paid in accordance with the Management Agreement shall have been paid, any balance may, upon five (5) days' written notice to the Debtors, the Agent for the Postpetition Lenders and such telecommunications service providers that shall send written request to the Buyer requesting such notice and the Buyer shall provide such notice to each party to the extent such party shall continue to provide services to the Debtors or the Buyer, be withdrawn by the Buyer.

9. Except as expressly permitted or otherwise specifically provided for in the Asset Purchase Agreement or this Sale Order, effective upon the occurrence of the Closing, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and other regulatory authorities, lenders, trade and other creditors holding Interests (including but not limited to any claims under any applicable revenue, pension, ERISA, tax, labor, environmental or natural resource law, rule or regulation, or any products liability law) of any kind or nature whatsoever against or in the Debtors or the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtors, the Purchased Assets, the operation of the Debtors' businesses prior to the Closing Date of the Sale of the Purchased Assets, or the transfer of such Purchased Assets to the Buyer, hereby are forever barred, estopped, and permanently enjoined from asserting against the Buyer, its successors or assigns (to the extent allowed by law), its property, its officers, directors and shareholders or the Purchased Assets, such persons' or entities' Interests. Notwithstanding anything herein to the contrary, nothing

herein shall in any way affect or diminish any rights of the Debtors or any successor thereto (including any chapter 11 or chapter 7 trustee) with respect to obligations of the Buyer arising under the Asset Purchase Agreement, the Management Agreement or this Sale Order. This Sale Order shall be binding on the Debtors and the Debtors' estates, including, following any conversion of these cases, any successor chapter 7 estates, and any chapter 7 trustees appointed in these cases.

10. The consideration provided by the Buyer for the Purchased Assets under the Asset Purchase Agreement shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia.

11. Notwithstanding any provision to the contrary in this Sale Order, the Motion or the Asset Purchase Agreement, certain prototype laboratory equipment (as listed on Exhibit A hereto, the "Lab Equipment") and certain disbursement and investment accounts established in connection with the Lucent Credit Agreement (as listed on Exhibit B hereto, the "Accounts") shall be segregated from the Debtors' other assets, shall not constitute part of the Purchased Assets and shall not be included in the Sale. Nothing in this Sale Order, the Motion or the Asset Purchase Agreement shall impair or affect the rights and interests of Lucent in the Lab Equipment and the Accounts. The Buyer hereby reserves the right, subject to notice and a hearing, to seek to characterize the Lab Equipment as owned by the Debtors, and to the extent an Order so providing is entered by the court, the Lab Equipment shall constitute Purchased Assets.

12. This Sale Order (a) shall be effective as a determination that, on the Closing Date, and subject to the occurrence of the Closing, all Interests of any kind or nature whatsoever existing prior to the Closing as to the Purchased Assets transferred pursuant to the

Asset Purchase Agreement (including but not limited to any claims under any applicable revenue, pension, ERISA, tax, labor, environmental or natural resource law, rule or regulation, or any products liability law) have been unconditionally released and terminated as to such Purchased Assets, and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the act of all entities, including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Assets.

13. Each and every federal, state and local governmental agency, department or unit is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Asset Purchase Agreement, except the FCC as regards its approval of the transfer of the Licenses.

14. Except as expressly permitted or otherwise specifically provided for in the Asset Purchase Agreement or this Sale Order in respect of the Asset Purchase Agreement or the Purchased Assets to be transferred pursuant to such Asset Purchase Agreement, the Buyer shall have no liability or responsibility for any liability or other obligation of the Debtors arising under or related to such Purchased Assets and, to the extent allowed by law, the Buyer (and its officers, managers and members) shall not be liable for any other claims against the Debtors or any of their predecessors or affiliates, and the Buyer shall have no successor or vicarious liabilities of any kind or character whether known or unknown as of the Closing Date under the Asset

Purchase Agreement, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors, other than the Permitted Encumbrances, arising prior to the Closing Date under the Asset Purchase Agreement, including, but not limited to, any liabilities under any revenue, pension, ERISA, tax, labor, environmental or natural resource law, rule or regulation, or any products liability law, arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of the Debtors' businesses prior to the Closing Date. After the Closing and the payment of the Purchase Price, the Buyer shall have no liability to the Debtors or their estates for any diminution in value or other damage of any kind whatsoever to the Regulated Assets or the Licenses that may result from the Buyer's operation of the Debtors' business.

15. This Court retains and shall have exclusive jurisdiction to endorse and implement the terms and provisions of the Asset Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith (including the Management Agreement) in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Purchased Assets to the Buyer, (b) compel delivery of the purchase price or performance of other obligations owed to the Debtors, (c) resolve any disputes arising under or related to the Asset Purchase Agreement, and (d) interpret, implement, and enforce the provisions of the Asset Purchase Agreement and this Sale Order.

16. The transactions contemplated by the Asset Purchase Agreement are undertaken by the Buyer in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale of any Purchased Assets shall not affect the validity of the Sale of such Purchased Assets to the Buyer, unless such authorization is duly stayed pending such

appeal prior to the Closing with respect to such Purchased Assets. The Buyer is a purchaser in good faith of the Purchased Assets, and the Buyer is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

17. The terms and provisions of the Asset Purchase Agreement and this Sale Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, and their creditors, the Buyer and their respective affiliates, successors and assigns and any affected third parties (including, but not limited to, all persons asserting Interests in the Purchased Assets to be sold to the Buyer pursuant to the Asset Purchase Agreement), notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding.

18. The failure specifically to include any particular provisions of the Asset Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Asset Purchase Agreement be authorized and approved in its entirety. To the extent that any provision of this Sale Order is inconsistent with the Asset Purchase Agreement or the Management Agreement, the terms of this Sale Order shall control.

19. The Asset Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates and is, if occurring prior to the Closing Date, approved by counsel for each of the Creditors' Committee, the agent for the lenders under the Pre-Petition Credit Agreement, and the agent for the lenders under the DIP Credit Agreement. The Debtors shall also notify counsel for Lucent of any

modification, amendment or supplement to the Asset Purchase Agreement and, if such modification, amendment or supplement impairs or adversely affects Lucent's rights as a secured creditor in these chapter 11 cases, shall obtain Lucent's prior consent thereto.

20. The transfer of the Purchased Assets pursuant to the Asset Purchase Agreement, and the transactions contemplated thereby constitute steps toward the formulation, or in anticipation of the formulation of, a chapter 11 plan for the Debtors and as such, in accordance with section 1146(c) of the Bankruptcy Code, the making or delivery of any instrument of transfer to effectuate the Asset Purchase Agreement and the transactions contemplated thereby shall not be taxed under any law imposing a stamp tax or a sale, transfer or any other similar tax, and the recordation of any instruments (including bills of sale, leases, assignments and amendments thereto) to evidence the Sale of the Purchased Assets shall not be subject to any such tax.

21. All of the Debtors' interests in the Purchased Assets to be acquired by the Buyer under the Asset Purchase Agreement shall be, as of the Closing Date and upon the occurrence of the Closing, transferred to and vested in the Buyer. Upon the occurrence of the Closing, this Sale Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Purchased Assets acquired by the Buyer under the Asset Purchase Agreement and/or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in the Purchased Assets acquired by the Buyer under the Asset Purchase Agreement to the Buyer.

22. As of the Closing Date, the Buyer shall be hereby granted immediate and unfettered access to the Purchased Assets (other than the Licenses) acquired by the Buyer.

Regulatory Transition Process

23. The Debtors and the Buyer shall have a period (the "Regulatory Compliance Period") of one hundred-twenty (120) days (subject to extension) from the Closing Date to obtain the requisite federal and state regulatory approvals necessary to operate the Business and to enter into contractual or other legal arrangements necessary for the consummation of the Sale, transfer of the Licenses and the Regulated Assets (as defined below) to the Buyer and the operation of the Purchased Assets by the Buyer (the "Compliance Items"). In order to ensure the uninterrupted provision of services to the Customers during the Regulatory Compliance Period, and the orderly transfer of the Licenses and, to the extent required by any other applicable law, any other assets subject to similar transfer restrictions (the "Regulated Assets") to the Buyer, the Buyer, the Debtors and all providers of goods and services to the Debtors, including but not limited to the common carrier service providers that provide services to the Debtors and any landlords of properties used by the Debtors (the "Service Providers") are hereby authorized and directed as follows:

a. As soon as practicable following the entry of this Sale Order, the Debtors and the Buyer are directed to file such applications as are required to seek the federal and state regulatory authority necessary for the Debtors to assign, and the Buyer to acquire, own and operate, the Licenses and the Regulated Assets.

b. On the Closing Date, the Buyer and the Debtors are directed to enter into a Management Agreement substantially in the form appended as Exhibit E to the Asset Purchase Agreement, pursuant to which the Buyer shall be entitled to manage and operate the business of the Debtors during the Regulatory Compliance Period on the terms and conditions set forth therein

c. From the Closing Date to the Cutoff Date, all agreements and other arrangements with Service Providers relating to the Debtors providing service to Customers shall, subject to compliance with paragraph (d) below, remain in effect and

may not be canceled or terminated, and absent an event of default occurring after the Closing Date in respect of facts arising after the Closing Date that has not been cured within three (3) business days after written notice (by email and facsimile) thereof has been received by the Buyer (Attention: Chief Financial Officer, email: steveb@corp.idt.net, facsimile: 973-438-1414, and McDermott, Will & Emery, Attention: David C. Albalah, Esq., email: dalbalah@mwe.com, facsimile: 212-574-5444), no Service Provider shall reduce or otherwise alter in any adverse manner its performance under any such agreement(s) or arrangement(s) until the Cutoff Date.

d. The Buyer shall be responsible for, and is directed to pay on a timely basis, all charges incurred for services used by the Debtors to provide services to the Customers from the Closing Date to the Cutoff Date, including all charges incurred with respect to Service Providers. The rates charged by Service Providers for such services shall not exceed the rates for those services in effect as of the date of this Sale Order. Neither the Debtors or Buyer shall have any obligation or liability for services not actually being utilized and each Service Provider shall, upon written notice from the Debtors and the Buyer, immediately and without charge or further liability of any kind discontinue and disconnect any such services provided to the Debtors and/or the Buyer.

e. The Buyer is further authorized to promptly establish such contractual or other legal arrangements as the Buyer and the Debtors deem necessary to operate the Debtors' assets and to provide service to Customers (including interconnection and other common carrier service agreements with Service Providers) and that will permit Buyer to provide service to Customers in a manner similar to the manner in which the Debtors provided such service prior to the date of this Sale Order and that will enable the Customers to continue to receive service in an uninterrupted and transparent manner.

f. During the 120-day period commencing on the Closing Date, in the event that any contract with any Service Provider that is a telecommunications carrier shall be rejected: (i) no termination liabilities shall arise; (ii) such telecommunications carrier

shall provide telecommunications services in accordance with, and to the extent required by, applicable law in a non-discriminatory manner; and (iii) such telecommunications carrier will charge the Buyer for replacement circuits the lower of actual costs and tariff rates to set up or establish such replacement circuits.

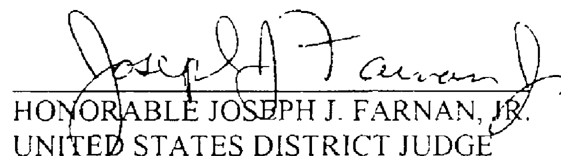
24. The Buyer is hereby directed to pay all costs of the ongoing operations of the Business in accordance with the Management Agreement. The Buyer shall have the ability during the Regulatory Compliance Period to direct the Debtors to seek the entry of one or more orders of the Court authorizing the Debtors to assume and assign to the Buyer any executory contract or unexpired lease to which the Debtors are a party, provided that the Buyer shall be solely responsible for paying any cure payment that is payable in connection with any such assumption and assignment. The Buyer shall have the ability during the Regulatory Compliance Period to direct the Debtors to reject any executory contract or unexpired lease to which the Debtors are a party provided that the Buyer must elect whether to assume and assign or reject any contracts with the GSA and must provide written notice of such election to the GSA on or before January 2, 2002. The Debtors may effect any such rejection by delivery of two (2) business days prior written notice (and the irrevocable waiver of the right to withdraw such notice) to the non-Debtor party to any such executory contract or unexpired lease of the Debtors' unequivocal intent to reject such executory contract or unexpired lease. In the event that the Buyer elects to reject any contract on account of which a prepayment has been made pursuant to Section 3.1(a) of the Management Agreement, the counterparty to such contract shall be obligated to refund promptly to the Buyer (without setoff or counterclaim) the unused portion of such prepayment and in the event of any dispute with respect thereto, the Buyer reserves the right to seek adjudication in the Bankruptcy Court. In the event that the Buyer elects rejection of

some or all of Debtors' contracts with the GSA, the Buyer agrees that it will continue to provide telecommunications services to GSA until GSA has received sixty (60) days' notice of discontinuance, or such longer period as the FCC requires. In all other respects, the Buyer shall manage the operations of the Business and shall be responsible for such operation pursuant to the terms and subject to the conditions of the Asset Purchase Agreement and the Management Agreement. The period within which the Debtors may elect to assume or reject unexpired leases of nonresidential real property under Bankruptcy Code section 365(d)(4) is hereby extended through the duration of the Term.

25. Upon receipt of the required regulatory approvals and establishment of the necessary service agreements and arrangements, the Debtors are authorized to convey the Licenses and the Regulated Assets to the Buyer, in accordance with the terms and conditions of the Asset Purchase Agreement and the Management Agreement.

26. As provided by Rules 6004(g) and 6006(d) of the Federal Rules of Bankruptcy Procedure, the effectiveness of this Sale Order shall not be stayed for 10 days after entry on the docket and shall be effective and enforceable immediately upon such entry. The Buyer and the Debtors shall consummate the Sale as promptly as is practicable following Court approval of this Sale Order, so long as no stay of this Sale Order has been entered and is continuing.

Dated: Wilmington, Delaware
December 19, 2001



HONORABLE JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE

EXHIBIT A

Description of Lab Equipment

The following equipment currently is located at the Winstar lab facility, 2545 Horse Pen Road, Herdon, Virginia (the "Winstar Lab").

1. Metropolis "evaluation" configuration description --

a. Metropolis 4500 System consisting of 1 Large Service Shelf, a High Speed optical Shelf and associated circuit packs;
b. Metropolis 2500 system consisting of a Large Service Shelf and associated circuit packs;
c. Metropolis 2000 system consisting of a Service Shelf and associated circuit packs.

The systems are installed in two seven foot equipment racks in the Winstar Lab.

2. AnyMedia "evaluation" configuration description --

a. AnyMedia Access Unit consisting of common circuit packs & associated interface circuit packs;

b. Breakdown for AnyMedia:

FAC 100 S1:1 SL1EJDCAA
FAC 100 S1:1 SLC1EJDCAA
COM100 S2:2 SLC1CGLCAA
COM100 S2.3 SLC1CGLCA8
DTP100 S1:1 SLC1DH0CAA
DTP101 S1:2 SLC1DHKCAB
LPA380 S3:3 E51SFBAAAA
LPA300 S1:1 SLCUVR0BAA
LPA380 S3:3 E51SFBAAAA
LPU 116 S2:3 SN980CD953522L 107743536002 ESPQAYKAA
Two tip ring cables - new
Two T-1 Cables pieced together from parts
Power cables

The trial configuration is a shelf mounted within a single seven foot equipment rack.

EXHIBIT B

Description of Accounts

Account	Account Number
Fleet Bank Investment Account	9427772529
Fleet Bank Investment Account	9428385707
State Street Investment Account	3274457
State Street Investment Account	3324773
Fleet Bank Disbursement Account	9427772510
Fleet Bank Disbursement Account	9428385694

EXHIBIT B

MANAGEMENT AGREEMENT

MANAGEMENT AGREEMENT

This Management Agreement (this "*Agreement*") is made and entered into as of this day of December 18, 2001, by and among Winstar Communications, Inc., a Delaware corporation ("*Winstar*"), and certain of its subsidiaries set forth on Appendix I to the Asset Purchase Agreement (as defined below) (collectively, the "*Sellers*") that hold FCC Licenses and State Regulatory Licenses and IDT Winstar Acquisition, Inc. (the "*Buyer*"), a Delaware corporation.

WHEREAS, the Sellers and the Buyer have entered into an Asset Purchase Agreement dated as of December 18, 2001 (the "*Asset Purchase Agreement*") whereby the Buyer has agreed to purchase certain assets from Winstar which shall be transferred to the Buyer on the Closing Date;

WHEREAS, Winstar has the rights to use the FCC Licenses to operate the spectrum licensed thereunder;

WHEREAS, Winstar is authorized to provide intrastate telecommunications services pursuant to the State Regulatory Licenses;

WHEREAS, the Buyer desires, in conformity with the rules and policies of the FCC, the state regulatory authorities and the terms and conditions of this Agreement, to provide management services to, and fund the continued operations of, Winstar and to operate the Business, including the services provided to customers using the FCC Licenses and the State Regulatory Licenses after the Closing Date;

WHEREAS, there are certain assets that, but for the requirement to obtain governmental or third party consents prior to their transfer would constitute Purchased Assets, are not being transferred to the Buyer at the Closing (the "*Non-transferred Assets*");

WHEREAS, Winstar desires to use the management services provided by the Buyer and to make its assigned spectrum under its FCC Licenses and its rights pursuant to the State Regulatory Licenses and access to the Non-transferred Assets available to the Buyer on terms and conditions which conform to the FCC's and applicable state regulatory authorities' rules and policies and to this Agreement;

WHEREAS, the parties desire to enter into this Agreement to ensure the continued operations of the Business and service to Winstar's customers pending regulatory approval of the transfer or assignment of Winstar's FCC Licenses and State Regulatory Licenses; and

WHEREAS, this Agreement and the Asset Purchase Agreement are interrelated according to their respective provisions;

NOW, THEREFORE, in consideration of the above recitals and mutual promises and covenants contained herein, the parties, intending to be legally bound, agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 *Definitions.* Any term capitalized herein and not otherwise defined shall have the meaning assigned to it in the Asset Purchase Agreement.

ARTICLE II
APPOINTMENT AND TERM OF THE AGREEMENT

Section 2.1 *Appointment.* Winstar hereby grants to the Buyer on the terms and conditions set forth herein, the right to manage the Business, including, without limitation, the right to use the FCC Licenses and State Regulatory Licenses and to have access to and use of the Non-transferred Assets during the Term (as defined below).

Section 2.2 *Term.* This Agreement shall commence on the Closing Date and shall expire upon the earliest to occur of (x) the transfer of the FCC Licenses and State Regulatory Licenses and the Non-transferred Assets to the Buyer pursuant to the terms and subject to the conditions of the Asset Purchase Agreement and (y) (1) June 30, 2002 or (2) at any time after the Cutoff Date (as defined below) as the Buyer, in its discretion, shall determine (the "*Term*"). In the event that this Agreement is terminated pursuant to clause (y) above, thereafter, to the extent that any consent to the transfer of any State Regulatory License remains to be obtained, the parties shall enter into a successor agreement providing the Buyer with the benefit of such State Regulatory License, which shall remain in effect until the last of such State Regulatory Licenses is obtained, unless the Buyer determines, in its sole discretion, not to pursue the transfer of any such State Regulatory License. Notwithstanding the foregoing, this Agreement may be terminated by the Sellers in writing and with the prior written consent of the Post-petition Agent at any time in their sole discretion; provided that any such termination which occurs at a time when the Buyer is not in material breach of this Agreement shall be effective only if the Sellers refund to the Buyer the Purchase Price and all amounts funded to the Buyer by its Affiliates (whether through the Account or otherwise), but net of any dividends of distributions made by the Buyer to its Affiliates.

Section 2.3 *Proceeds.* If any FCC License or State Regulatory License is not transferred to the Buyer, and the Sellers, with the Buyer's consent (which shall not be unreasonably withheld) sell or otherwise dispose of any such FCC License or State Regulatory License, the Sellers shall promptly pay over to Buyer the net proceeds of such sale. In the event that the Buyer designates an alternate purchaser for any such FCC License or State Regulatory License, the Sellers shall use reasonable efforts to transfer to such FCC License or State Regulatory License (as the case may be) to such alternate purchaser with all costs incurred in connection therewith to be borne by the Buyer.

ARTICLE III
FINANCIAL OBLIGATIONS OF THE PARTIES

Section 3.1 *Ongoing Operations.* (a) The Buyer hereby agrees to pay, in advance on a weekly basis, all newly-accruing actual costs and expenses of the ongoing

operations of the Business during the period commencing on the Closing Date and ending, as applicable to specific customers, on the date on which the FCC grants authority to Buyer to discontinue service to the customers of the Sellers (the last day of such period being the "*Cutoff Date*"). Notwithstanding the foregoing, the Buyer shall have no rights with respect to the Chapter 11 Cases or any right to participate therein except as set forth in the Asset Purchase Agreement.

(b) The Buyer hereby agrees in furtherance of its obligations to ensure that, not later than the Closing Date, it will fund an account at Citibank, N.A. (from which, during the Term, funds shall not be withdrawn except to pay amounts required to be paid pursuant to subsection (a) above) (the "*Account*") with at least $60 million in cash. In the event that the Buyer shall fail to pay any such amounts require to be paid by the Buyer pursuant to this Agreement and the Seller shall be held liable for such amounts, the Buyer hereby agrees to indemnify Seller for all such costs. In the event that any funds shall be on deposit in the Account after the Cutoff Date, and all accrued and unpaid costs required to be paid pursuant to subsection (a) above shall have been paid, any balance shall upon five (5) days' written notice to the Sellers and the Post-petition Agent, be able to be withdrawn.

(c) (i) the Buyer agrees that at Closing, all employees currently employed by the Sellers shall continue to be employed and the Buyer shall pay all costs of such employees arising after the Closing Date (including benefits in existence as of the Closing Date); provided, that a reasonable number of employees (not greater than twenty) to be designated by the Sellers shall remain to assist in the liquidation of the estates and the costs of such employees shall remain an expense of the estates.

(ii) the Buyer may from time to time designate employees to whom the Buyer would like to offer employment.

(iii) the Sellers shall not take any direct actions that would encourage employees to leave the employ of the Sellers or to discourage any employee from obtaining employment with the Buyer if offered; provided, that nothing herein shall require the payment by the Sellers of any severance or retention payments.

(d) The Sellers shall have the right to reject at any time and from time to time any contracts and agreements that are not Assumed Agreements.

(e) The Sellers shall cause a bank account (the "*Bank Account*") to be established on the date hereof solely for the benefit of the Buyer, and shall deposit therein after the date hereof, all receipts from customers of the Business pertaining to services rendered after the Closing Date from which the Buyer may withdraw in its discretion.

ARTICLE IV
MANAGEMENT OF THE BUSINESS

Section 4.1 (a) During the Term, the Buyer shall have the right to manage the facilities and operations authorized under the FCC Licenses and State Regulatory Licenses in the operation of the Business consistent with the provisions of this Agreement. The Buyer hereby

agrees to report regularly to Winstar's chief executive officer or other designee of Winstar the status of the operations of the Business.

(b) The Buyer, at its sole discretion, shall determine when notices to customers advising them of the discontinuance of service (the "*Discontinuance Notices*") shall be delivered and when applications or other filings with Governmental Authorities in connection with the discontinuance of service (the "*Discontinuance Filings*") shall be filed. Within three (3) Business Days of the delivery of written direction by the Buyer, Winstar, at the Buyer's sole expense, shall cause such Discontinuance Notices to be delivered or shall cause such Discontinuance Filings to be filed, as applicable.

Section 4.2 The Sellers and the Buyer desire that this Agreement and the obligations performed hereunder be in full compliance with (i) the terms and conditions of the Sellers' FCC Licenses; (ii) all applicable rules, regulations and policies of the FCC; (iii) the Communications Act of 1934, as amended (the "*Act*"), 47 U.S.C. § 151, et seq., and (iv) any other applicable federal, state and local law or regulation. If the FCC or any state body of competent jurisdiction determines that any provision of this Agreement violates any applicable rules, regulations, or policies, both Parties shall make reasonable efforts to immediately bring this Agreement into compliance, consistent with the terms of this Agreement. It is expressly understood by the Sellers and the Buyer that nothing in this Agreement is intended to give the Buyer any right which would be deemed to constitute a transfer of control (as "control" is defined in the Communications Act of 1934, as amended, and/or any applicable FCC or state regulations, rules or case law) by the Sellers of one or more of the FCC Licenses or State Regulatory Licenses from the Sellers to the Buyer.

Section 4.3 The Buyer acknowledges and agrees that the Sellers have certain rights and obligations pursuant to their FCC Licenses and State Regulatory Licenses with respect to the use of the various operations authorized thereunder, which includes compliance with the Act, and the rules, regulations, and policies of the FCC and state regulatory commissions. As a result, the Buyer's management of the Business is not intended to diminish or restrict the Sellers' compliance with its obligations before the FCC and state regulatory commissions, and this Agreement shall not be construed to interfere with the Sellers' ability to comply with the rules, regulations or directives of any governmental or jurisdictional authority with respect to its FCC Licenses, the spectrum licensed thereunder, or the State Regulatory Licenses.

Section 4.4 At its discretion and at its expense, the Sellers may conduct periodic audits (during normal business hours, upon reasonable notice, and in a manner so as not to interfere unreasonably with the operation of the Business) of the Buyer's management of the Business to ensure compliance in all material respects with FCC rules and regulations. In addition, the Sellers shall have reasonable access and authority to inspect the radio equipment and related hardware required to transmit and/or receive radio signals via the spectrum, including but not limited to customer premises equipment ("*CPE*"), testing equipment, and hubs for the purpose of determining (and the Sellers may immediately suspend the Buyer's management of the spectrum if the Sellers determine, in their reasonable judgment or as directed by the FCC), whether the Buyer's management is causing harmful interference or is operating in a manner that violates the Act, the FCC's rules, regulations, or policies or is otherwise operating in a harmful or unlawful manner.

Section 4.5 During the Transitional Period (as defined below), the Buyer shall be responsible for providing a minimum level of care to Sellers' customers, and shall provide services in compliance with the Sellers' existing tariffs and service contracts, and all applicable law, including, without limitation, tariffs in effect from time to time. To maintain the integrity of the Sellers' network and reputation in the marketplace, the Buyer shall perform the management of the Business in a professional manner and in accordance with all applicable professional or industry standards during the Transitional Period. The Buyer hereby agrees to use its reasonable best efforts to cause an orderly migration of customers off the Winstar wireless network during the period through the applicable Cutoff Date (such period, the "*Transitional Period*"). Buyer agrees to comply with the discontinuance of service notice requirements pursuant to § 214 of the Communications Act. Notwithstanding any thing to the contrary contained herein or in the Asset Purchase Agreement, the Buyer shall have no obligation hereunder to maintain service to any customer if the termination of such service is the consequence of actions by a third party which is not the result of a breach by the Buyer of its obligations hereunder.

Section 4.6 The Buyer shall use the Winstar brand name and other Winstar trademarks in its management of the portion of the Business then being managed by the Buyer hereunder during the Term of this Agreement.

Section 4.7 The Buyer shall not cause the Sellers (or the Chapter 11 estates) to become liable for any costs of operating the Business after the Closing Date.

ARTICLE V
COMPLIANCE WITH APPLICABLE LAWS

Section 5.1 *Compliance with All Applicable Laws*. The Buyer agrees that its utilization of the FCC Licenses and State Regulatory Licenses in the management of the Business during the Term shall comply with all applicable laws, ordinances, rules, regulations, and restrictions, including but not limited to the Act, the FCC's rules, regulations, and policies, local ordinances, and state regulations.

Section 5.2 *Compliance with FCC Regulations*.

(a) The Buyer recognizes that the Sellers remain ultimately responsible for ensuring that the use of the FCC Licenses and the spectrum licensed thereunder is in compliance with the rules, regulations, and policies of the FCC and the Act.

(b) The Sellers shall be responsible for the filing of all applications, reports, correspondence and other documentation with the FCC relating to the acquisition, use, maintenance or renewal of the FCC Licenses; provided, that the Buyer shall cooperate with such filings; provided, further, that the Buyer shall reimburse the Sellers for all reasonable out-of-pocket legal fees and expenses in connection with such applications, correspondence and other related matters. The Buyer shall provide upon the Sellers' reasonable request any information which will enable it to prepare any records and reports required by the FCC and local, state or other federal government authorities.

(c) The Buyer shall not represent itself as the holder of any of the FCC Licenses or State Regulatory Licenses, nor as the representative of the Sellers before the FCC, any state regulatory body or any other third party.

Section 5.3 *Compliance with State Regulations.*

(a) The Buyer recognizes that the Sellers remain ultimately responsible for ensuring that the use of the State Regulatory Licenses and the operations authorized thereunder is in compliance with the applicable State rules, regulations, and policies of the applicable State regulatory commission.

(b) The Sellers shall be responsible for the filing of all reports and correspondence with the State Regulatory Commissions regarding the State Regulatory Licenses. The Buyers shall provide upon the Sellers' reasonable request any information which will enable it to prepare any records and reports required by the state or local government authorities; provided, that the Buyer shall cooperate with such filings; provided, further, that the Buyer shall reimburse the Sellers for all reasonable out-of-pocket legal fees and expenses in connection with such applications, correspondence and other related matters. The Buyer shall provide upon the Sellers' reasonable request any information which will enable it to prepare any records and reports required by the FCC and local, state or other federal government authorities.

ARTICLE VI
OBLIGATION TO RENEGOTIATE

Section 6.1 In the event of any order or decree of an administrative agency or court of competent jurisdiction, including without limitation any material change or clarification in FCC rules, policies, or precedent, that would cause this Agreement to be invalid or violate any applicable law, and such order or decree has become effective and has not yet been stayed, the parties will use their respective best efforts and negotiate in good faith to modify this Agreement to the minimum extent necessary as so to comply with such order or decree without material economic detriment to either party, and this Agreement, as so modified, shall then continue in full force and effect.

ARTICLE VII
MISCELLANEOUS

Section 7.1 *Amendment and Modification.* This Agreement may be amended, modified or supplemented only by written agreement of Winstar (on behalf of the Sellers) and the Buyer; and provided that such amendment or modification shall have been consented to in writing by the Post-petition Agent.

Section 7.2 *Waiver of Compliance; Consents.* Except as otherwise provided in this Agreement, any failure of any of the parties to comply with any obligation, covenant or condition herein may be waived by the party entitled to the benefits thereof only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon

strict compliance with such obligation, covenant, or condition shall not operate as a waiver of or estoppel with respect to any subsequent or other failure.

Section 7.3 *No Impediment to Liquidation*. Subject to Sections 2.2(e), 6.2(c), 6.4 and 6.7 of the Asset Purchase Agreement, nothing herein shall be deemed or construed as to limit, restrict or impose any impediment to the Sellers' right to liquidate, dissolve and wind-up its affairs and to cease all business activities and operations at such time as it may determine following the Closing, including a conversion of the Chapter 11 Cases to Chapter 7. Subject to Sections 2.2(e), 6.2(c), 6.4 and 6.7 of the Asset Purchase Agreement, the Sellers shall not be obligated to retain assets or employees or to continue operations following the Closing (or to retain outsource assistance) in order to satisfy their obligations hereunder, except to the extent that such would directly contravene the obligations of the Sellers under the Asset Purchase Agreement or this Management Agreement.

Section 7.4 *Notices*. All notices and other communications hereunder shall be in writing and shall be deemed given (i) when personally sent/delivered, by facsimile transmission (with hard copy to follow) or sent by reputable express courier (charges prepaid) or (ii) five (5) days following mailing by registered or certified mail postage prepaid and return receipt requested. Unless another address is specified in writing, notices, demands and communications to any Seller and the Buyer shall be sent to the addresses indicated below:

(a) If to any of the Sellers, to:

c/o Winstar Communications, Inc.
The Winstar Building
685 Third Avenue
31st Floor
New York, New York 10017
Facsimile: (212) 792-9348
Attention: Paul Street, CRO

with a copy to:

Shearman & Sterling
599 Lexington Avenue
New York, New York 10022
Facsimile: (212) 848-7179
Attention: Mark J. Shapiro, Esq.
Stephen M. Besen, Esq.

(b) if to the Buyer, to:

c/o IDT Corporation
520 Broad Street
Newark, New Jersey 07102
Facsimile: (973) 438-1503
Attention: General Counsel

with a copy to:

McDermott, Will & Emery
50 Rockefeller Plaza
New York, New York 10020
Facsimile: (212) 547-5444
Attention: Mark S. Selinger, Esq.
David C. Albalah, Esq.

Section 7.5 *Assignment.* This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns and with respect to any of the Sellers, any entity that may succeed to substantially all the assets of such Seller, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any party hereto, including by operation of law, without the prior written consent of the other party; provided that the Buyer may assign this Agreement and any of the rights, interests and obligations hereunder to any Affiliate upon written notice to the Sellers; provided, however, that the Buyer shall remain liable hereunder. Any assignment of this Agreement or any of the rights, interests or obligations hereunder in contravention of this Section 7.5 shall be null and void and shall not bind or be recognized by any of the Sellers or the Buyer.

Section 7.6 *Third-Party Beneficiaries; Limitation of Liability.* Nothing in this Agreement shall be construed as giving any person other than the parties hereto any legal or equitable right, remedy or claim under or with respect to this Agreement. The Buyer shall have no liability to the Sellers or any other person or entity for any actual or alleged damage to the Purchased Assets or the Business during the Term.

Section 7.7 *Severability.* If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 7.8 *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might otherwise govern under applicable New York principles of conflicts of law) as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies.

Section 7.9 *Submission to Jurisdiction.* The parties hereto irrevocably submit to the exclusive jurisdiction of the Bankruptcy Court (or any court exercising appellate jurisdiction over the Bankruptcy Court) over any dispute arising out of or relating to this Agreement or any other agreement or instrument contemplated hereby or entered into in connection herewith or any of the transactions contemplated hereby or thereby. Each party hereby irrevocably agrees that all claims in respect of such dispute or proceedings may be heard and determined in such courts. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum in connection therewith.

Section 7.10 *Counterparts.* This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

Section 7.11 *Entire Agreement.* This Agreement, the Asset Purchase Agreement (including the Exhibits and the Disclosure Schedule) and the Escrow Agreement constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings among the parties with respect thereto.

Section 7.12 *Headings*. The descriptive headings contained in this Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 7.13 *Remedies*. The Sellers and the Buyer hereby acknowledge and agree that money damages may not be an adequate remedy for any breach or threatened breach of any of the provisions of this Agreement and that, in such event, the Sellers or their successors or assigns, or the Buyer or its successors or assigns, as the case may be, may, in addition to any other rights and remedies existing in their favor, apply to the Bankruptcy Court for specific performance, injunctive and/or other relief in order to enforce or prevent any violations of this Agreement.

Section 7.14 *No Partnership or Joint Venture Created*. Nothing in this Agreement shall be construed or interpreted to make the Buyer and the Sellers partners or joint venturers, or to make one an agent or representative of the other, or to afford any rights to any third party other than as expressly provided herein. Neither the Buyer nor the Sellers are authorized to bind the other to any contract, agreement or understanding.

IN WITNESS WHEREOF, the parties hereto have executed this Management Agreement on the day and year first written above.

IDT WINSTAR ACQUISITION, INC.

____

WINSTAR COMMUNICATIONS, INC.

____

WINSTAR WIRELESS, INC.

By:______________________________
Name:
Title:

WCI CAPITAL CORP.

By:______________________________
Name:
Title:

WINSTAR EQUIPMENT CORP.

By:______________________________
Name:
Title:

WINSTAR EQUIPMENT II CORP.

By:______________________________
Name:
Title:

WINSTAR GOVERNMENT SOLUTIONS, LLC.

By:______________________________
Name:
Title:

WINSTAR LMDS, LLC

By:______________________________
Name:
Title:

WINSTAR NETWORK EXPANSION, LLC

By:______________________________
Name:
Title:

WINSTAR WIRELESS FIBER CORP.

By:______________________________
Name:
Title:

WINSTAR WIRELESS OF DELAWARE, LLC

By:______________________________
Name:
Title:

WINSTAR WIRELESS OF GEORGIA, LLC

By:______________________________
Name:
Title:

WINSTAR WIRELESS OF INDIANA, LLC

By:______________________________
Name:
Title:

WINSTAR WIRELESS OF NEW JERSEY, LLC

By:______________________________
Name:
Title:

WINSTAR WIRELESS OF NEW YORK, LLC

By:______________________________
Name:
Title:

WINSTAR WIRELESS OF PENNSYLVANIA, LLC

By:______________________________
Name:
Title:

WINSTAR WIRELESS OF VIRGINIA, LLC

By:______________________________
Name:
Title:

WINSTAR WIRELESS OF WEST VIRGINIA, LLC

By:______________________________
Name:
Title:

WWI LICENSE HOLDING, INC.

By:________________________________
Name:
Title:

WVF-CPQ 1, LLC

By:________________________________
Name:
Title:

WVF-CSC 1, LLC

By:________________________________
Name:
Title:

WVF-DL 1, LLC

By:________________________________
Name:
Title:

WVF-LU 2, LLC

By:________________________________
Name:
Title:

WVF-I LLC

By:______________________________
Name:
Title:

WINSTAR CREDIT CORP.

By:______________________________
Name:
Title:

WINSTAR INTERNATIONAL, INC.

By:______________________________
Name:
Title:

WINSTAR MIDCOM ACQUISITION CORP.

By:______________________________
Name:
Title:

WINSTAR NEW MEDIA COMPANY, INC.

By:______________________________
Name:
Title:

WINSTAR INTERACTIVE VENTURES I, INC.

By:______________________________
Name:
Title:

WINSTAR PUERTO RICO, INC.

By:______________________________
Name:

EXHIBIT C

New York PSC Order

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 02-M-0197 - Petition of Dominion Telecom, Inc. for a Declaratory Ruling on the Scope and Application of Consolidated Edison Company of New York, Inc.'s Tariff Applicable to Telecommunications Companies seeking to Install Telecommunications Cable in Consolidated Edison Service Territory.

DECLARATORY RULING ON INTERPRETATION OF TARIFF

(Issued and Effective February 22, 2002)

BACKGROUND

By Order issued May 22, 1998, the Commission approved a License and Operating Agreement (L&O Agreement) between Telergy Metro, LLC (Telergy) and Consolidated Edison Company of New York, Inc. (Con Edison).[1] By that Order, Telergy was given the non-exclusive right to construct or install fiber optic telecommunications facilities in, on, along, through and across Con Edison's rights-of-way, poles, conduits, ducts and other properties and facilities. Telergy was required to pay annual rents for the use of such properties and facilities, and to pay for design and planning, make-ready, inspection, construction and other costs associated with the installation of the fiber optic cable and associated equipment.

From 1998 to the present, Telergy has installed telecommunications facilities throughout Con Edison's service territory in accordance with and pursuant to the terms of the L&O Agreement. However, Telergy has not paid Con Edison for all

[1] Case 98-M-0255, Petition of Consolidated Edison Company of New York, Inc. for Approval of a License and Operating Agreement dated January 28, 1998, between Consolidated Edison and Telergy Metro LLC, Order Approving License and Operating Agreement and Use of Rights-Of-Way (issued May 22, 1998).

of the construction and related expenses associated with the installation, nor has it paid all of the annual lease charges provided for in the L&O Agreement. According to Con Edison, last summer it filed mechanics' liens against Telergy's franchise and telecommunications facilities, as well as a lawsuit to foreclose on the liens. The company reports that, as of October 2001, Telergy is approximately $17.5 million in arrears.

In October 2001, Telergy filed for bankruptcy protection pursuant to Chapter 11 of the Bankruptcy Code. Its case has since been converted to a Chapter 7 liquidation and the bankruptcy trustee is in the process of selling by auction all of Telergy's assets, including the telecommunications facilities located throughout Con Edison's service territory.

The relationship between Con Edison and Telergy has been the subject of three separate Commission proceedings and numerous investigations, hearings, settlements, and Commission orders. One aspect of the orders was a requirement that Con Edison establish a tariff providing for non-discriminatory access to its rights-of-way, poles, towers, conduits, ducts and properties to telecommunications carriers. In accordance with these requirements, Con Edison filed its proposed tariff on September 24, 2001.[2] By Order issued the same date, the Tariff was approved on one day's notice.[3]

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[2] The proposed tariff was denoted P.S.C. No. 9 - Electricity, Rider X - Rate for Use of Company Facilities for Telecommunications Purposes, and comprises Original Leaves 158-X through 158-X-10 and TEL Statement No. 1 (the Tariff).

[3] Case 01-E-1306, Ordinary Tariff Filing of Consolidated Edison Company of New York, Inc. to Establish a New Rider X - Rate for Use of Company Facilities for Telecommunications Purposes, Order Approving Tariff Filing (issued September 24, 2001).

THE PETITION AND RESPONSES

By Petition filed February 15, 2002, Dominion Telecom, Inc. (Dominion) seeks a declaratory ruling that a telecommunications carrier acquiring existing telecommunications facilities located in, on, along, through and across Con Edison's rights-of-way, poles, conduits, ducts and other properties and facilities may obtain a license to use such telecommunications facilities in such locations pursuant to the Tariff. Dominion indicates that it has made a bid for portions of Telergy's assets, including some of the assets located in Con Edison's service territory. It contends that Con Edison will not grant it a license pursuant to the Tariff for two reasons.

First, Dominion asserts that Con Edison claims the Tariff applies only to new facilities. Second, Dominion alleges that Con Edison is trying to force it to assume the L&O Agreement and all of the liabilities owed by Telergy to Con Edison thereunder.

Dominion challenges Con Edison's interpretation of the Tariff, noting that the Tariff's terms and conditions do not limit its applicability to new facilities. Dominion also states that it is not interested in acquiring all of Telergy's assets, only its backbone network.[4] Therefore, it argues, it should not be required to assume the L&O Agreement or Telergy's liabilities.

Con Edison filed comments to the Petition on February 20, 2002, pursuant to a Notice issued in this proceeding on February 15, 2002. It argues that Dominion is improperly trying to bypass Con Edison's efforts to collect the

[4] Telergy's assets comprise a backbone network, which runs from Con Edison's Pleasant Valley substation in Dutchess County to its Hudson Street facility located in lower Manhattan, and a number of spur routes, or rings, located in various areas of Manhattan.

arrears owed by Telergy while assuming the benefits of the L&O Agreement. Con Edison asserts that its claims against Telergy are outside the scope of the Commission's jurisdiction, that the Petition requires the Commission to decide the merits of Con Edison's pending claims, and that the Petition is premature because Dominion is not a telecommunications carrier operating in New York and therefore has no basis to seek service under the Tariff.

Con Edison argues that the L&O Agreement is an executory contract that governs all of Telergy's assets, and that the bankruptcy trustee (and Dominion, if it is selected as the winning bidder) must assume or reject the Agreement as a whole. Because Telergy's assets are located in Con Edison's rights-of-way and facilities solely pursuant to the L&O Agreement, Con Edison continues, if the Agreement is terminated by the trustee, Telergy's right to keep the assets in Con Edison's systems will be extinguished. Moreover, because it is essentially assuming the L&O Agreement, Dominion should be required to assume both the benefits and liabilities existing under the Agreement. Con Edison further disagrees with Dominion's contention that liabilities related to the backbone network can be differentiated from those related to the spur routes, arguing that Telergy built a single system pursuant to the L&O Agreement.

Con Edison asserts that it has acted in a non-discriminatory manner and is only attempting to protect its and its customers' interests. The company contends its efforts to obtain an agreement with each bidder to settle its claims against Telergy are reasonable and equitable, noting that it has reached agreement with one bidder and that it believes Dominion is improperly trying to avoid engaging in similar negotiations with the company. Con Edison further argues that in the event the L&O Agreement is rejected or otherwise terminated in the

bankruptcy proceeding, it may seek to have the cable removed, thereby making the space available for other telecommunications carriers.

BCE Inc. (BCE), the parent corporation of Bell Canada and Teleglobe USA Inc., also filed comments on February 20, 2002. BCE notes that it too submitted a bid for portions of Telergy's assets (primarily the backbone network). In contrast to Dominion, BCE reports that it has reached a tentative agreement with Con Edison regarding its ability to obtain a license to use Con Edison's rights-of-way and facilities should it be selected as the winning bidder for the assets. In doing so, however, BCE asserts that it does not endorse Con Edison's position and made a business decision to enter into such an agreement as the least-cost alternative in protecting its interests.

Michael J. Balanoff, the Chapter 7 Trustee (Trustee) also filed comments.[5] The Trustee suggests that the rates Con Edison may charge for use of its rights-of-way and facilities are governed by Section 253 of the Telecommunications Act of 1996 (47 U.S.C §253) because the State of New York has granted Con Edison the right to use public rights-of-way. The Trustee then contends that Con Edison's demand for reimbursement of the Telergy liabilities constitutes an impermissible premium charge under 47 U.S.C. §224. In addition to violating §224, the Trustee argues that Con Edison's actions violate the Bankruptcy Code provisions related to the rights of creditors in a bankruptcy proceeding, as well as the terms of the Tariff.

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[5] Although the Trustee's comments were not timely filed, no party has been prejudiced by the delay. Given the significant interest the Trustee has in this matter, his comments will be considered.

Con Edison's actions, the Trustee continues, also violate public policy objectives (both federal and state) of encouraging telecommunications competition. Finally, given the dates set by the Bankruptcy Court for concluding the auction and terminating the Trustee's authority to continue Telergy's operations, the Trustee asks the Commission to act expeditiously on the Petition.

DISCUSSION AND CONCLUSION

The sole issue before the Commission is one of tariff interpretation. That is, can a telecommunications carrier that acquires fiber optic cable and associated telecommunications facilities currently installed in, on, along, through and across Con Edison's rights-of-way, poles, conduits, ducts and other properties and facilities obtain the right of access to such rights-of-way and facilities from Con Edison pursuant to the Tariff? The Commission has not been asked to, and will not, decide any of the issues pending before the Bankruptcy Court or the New York Supreme Court, New York County with respect to Con Edison's rights as a creditor and lienholder, respectively.[6]

The Tariff was intended and designed to promote non-discriminatory access to Con Edison's rights-of-way and facilities by telecommunications carriers at the same or similar rates. While the Tariff generally anticipates carriers seeking access to Con Edison's system and then installing telecommunications facilities, it does not preclude carriers acquiring existing facilities from other companies and using Con Edison's rights-of-way and facilities. Indeed, the Tariff is clear that any telecommunications carrier using Con Edison's system is required to pay annual rent computed at the rates

[6] Similarly, the Trustee's contentions regarding the applicability of 47 U.S.C. §§224 and 253(c) need not be resolved given the language and intent of the Tariff.

specified therein. Accordingly, provided an entity obtains ownership of the Telergy assets, and the necessary approvals to own and operate the assets (including, but not limited to, authorization from the Commission and franchises from all applicable municipalities), it shall be entitled to obtain, pursuant to the Tariff, a non-exclusive license from Con Edison for access to Con Edison's rights-of-way and facilities.[7]

While Con Edison may have legitimate claims against Telergy for the arrears, the Tariff neither expressly requires nor implies that a telecommunications carrier acquiring Telergy's (or any other company's) assets is required, as a condition to receiving the license, to reimburse Con Edison for Telergy's arrears. As the Commission has previously observed, the dispute between Con Edison and Telergy properly belongs in the judicial arena.[8] This Ruling is not intended to pass judgment or opine on the veracity of Con Edison's contract, lien or bankruptcy claims, nor should it be construed as doing so.

(SIGNED) NEAL N. GALVIN
COMMISSIONER

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[7] On this issue, Con Edison's allegations regarding Dominion are erroneous. Dominion possesses a valid Certificate of Public Convenience and Necessity and currently has customers located with New York State. Accordingly, its Petition is not premature.

[8] Case 00-C-0134, et al., Complaint of Telergy Metro LLC Against Consolidated Edison Company of New York, Inc. and Consolidated Edison Communications, Inc. Concerning Telergy Metro's Access for Fiber Optic Facilities Across Consolidated Edison's Rights-of-Way, Order Resolving Rate Issues (issued June 22, 2001), p. 10-11.