

SWIDLER
&
BERLIN
CHARTERED

RICHARD M. RINDLER
ATTORNEY AT-LAW

DIRECT DIAL
(202)424-7771

FILE COPY

January 3, 1997

VIA FEDERAL EXPRESS

Ms. Blanca S. Bayo
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Re: Docket No. 960979-TP

Dear Mrs. Bayo:

Enclosed for filing are an original and fifteen (15) copies each of a Prehearing Statement of WinStar Wireless of Florida, Inc. and Rebuttal Testimony of Robert G. Berger in the above-captioned docket.

A copy of the Prehearing Statement is also on the enclosed diskette formatted in WordPerfect 6.1 for Windows. Please date stamp the extra copy and return it in the enclosed self-addressed envelope.

Thank you for your attention to this matter.

Sincerely,



Richard M. Rindler

- ACK _____
- AEA _____
- APP _____
- CAF _____
- CMU 3/2/97 _____
- CTR _____
- EAG _____
- LEG 1 _____
- LIN 3108 _____
- GPC _____
- PCH _____
- SEC 1 _____
- WAS _____
- OTH _____

All parties of record

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Prehearing Statement
DOCUMENT NUMBER-DATE

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EPSC-BUREAU OF RECORDS

1000 K STREET, N.W. WASHINGTON, D.C. 20007-5116
00079 JAN-65

00080 JAN-65

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the matter of)

WINSTAR WIRELESS OF FLORIDA, INC.)

Petition for Arbitration Pursuant to 47 U.S.C.)
§ 252(b) of Interconnection Rates, Terms, and)
Conditions with)

GTE FLORIDA INCORPORATED)
_____)

Docket No. 960979-TP

Filed: January 6, 1997

PREHEARING STATEMENT OF

WINSTAR WIRELESS OF FLORIDA, INC.

Docket No. 960979-TP

DOCUMENT NUMBER-DATE

00079 JAN-65

FPSC-RECORDS/REPORTING

**PREHEARING STATEMENT OF
WINSTAR WIRELESS OF FLORIDA, INC.
Docket No. 960979-TP**

Pursuant to Rule 25-22.038(3), Florida Administrative Code, WinStar Wireless of Florida, Inc. ("WinStar"), by its undersigned attorneys, hereby files this prehearing statement in the Commission's proceeding concerning WinStar's petition for arbitration of interconnection rates, terms, and conditions with GTE Florida Incorporated ("GTE").

- (a) the name of all known witnesses that may be called by the party, and the subject matter of their testimony;**

Robert G. Berger will testify as to the reasons for and scope of the most favored nation provision WinStar requires and the need for access to GTE owned or controlled roofs for purposes other than interconnection or collocation. He will also testify as to the course of negotiations on the issues. George Simons will testify as to the technology WinStar uses in its distribution network.

- (b) a description of all known exhibits that may be used by the party, whether they may be identified on a composite basis, and the witness sponsoring each;**

Robert G. Berger, on behalf of WinStar, will sponsor Exhibits RGB-1 through RGB-5 attached to the Petition for arbitration and RGB-6 attached to his Supplemental Testimony. Mr. Simon will sponsor Exhibit GS-1 attached to his testimony.

Exhibit RGB-1 is WinStar's Interconnection Request Letter
Exhibit RGB-2 is the MFS/GTE February 19, 1996 Co-Carrier Agreement
Exhibit RGB-3 is a RGB August 22, 1996 Memorandum re WinStar Interconnection conference call of August 22, 4:00 p.m.
Exhibit RGB-4 is a RGB August 22, 1996 Memorandum re WinStar/GTE Florida Interconnection Negotiations
Exhibit RGB-5 is the August 20 MFS/GTE Florida Interconnection Agreement
Exhibit RGB-6 is WinStar/GTE November 21, 1996 Interconnection Agreement
Exhibit GS-1 is a depiction of WinStar's distribution equipment

WinStar may further use such other exhibits as may be appropriate and necessary based upon, among other things, the course of the proceedings, matters learned in discovery and documents produced and other factors.

(c) a statement of basic position in the proceeding;

WinStar seeks Commission arbitration of two unresolved issues in its arbitration with GTE on interconnection rates, terms, and conditions. WinStar believes that its interconnection agreement with GTE must include a most favored nation provision allowing WinStar to obtain any term or provision GTE provides to another carrier through negotiation, arbitration or other Commission, FCC or court action without adopting the remaining provisions of such agreements. WinStar also believes that its interconnection agreement with GTE must provide for access to GTE owned or controlled roofs for the purpose of the placement of WinStar distribution equipment for purposes other than interconnection or access to unbundled elements. Both of these provisions should be included pursuant to the terms of the Telecommunications Act of 1996.

The language of the Telecommunications Act of 1996, on its face, states that carriers may select any interconnection, any service or any network element on the same terms and conditions as it is offered to another carrier in an approved agreement. By using the phrase "any interconnection, service or element, Congress clearly intended ALECs to be able to request from an ILEC any contractual provision obtained from that ILEC by another competitor, without being obliged to assume all other terms of the ILEC's existing agreement. GTE's effort to require a take it or leave it approach to interconnection agreements would drain the phrase "any interconnection, service or element" of meaning.

Because of its technology and relative size, WinStar's circumstances underscore the appropriateness of the Act's requirement that an ALEC be able to obtain any terms in another agreement between the ILEC and a competing carrier. Because it is a wireless ALEC, WinStar has certain unique needs. As a result, GTE's present proposal which would require that WinStar accept the terms of an interconnection agreement with a wireline carrier would have the effect of WinStar either having to adopt an agreement which does not meet its needs or forego entirely the protection afforded by the most favored nation provision in the Act. The most favored nation provision is a common commercial provision which is designed to assure parties that they will not be disadvantaged if a seller or employer offers a better price or term to a third party. It fundamentally prevents discrimination between parties.

Given the clear language of the Act, WinStar believed that GTE agreed with the Act's requirements. Until the eve of the date on which a petition would need to be filed, WinStar's negotiations were premised on that belief. The history of the GTE/WinStar negotiations evidence WinStar's reliance on such an M-F-N which allows for item-by-item selection as a proxy for the requirement that the parties negotiate separately over every term of the agreement, particularly price. GTE's midnight conversion should not be allowed to eliminate the basis of the negotiations.

Under Section 251(a)(4), GTE is required to afford access to rights-of-way to competing providers of telecommunications services on rates, terms and conditions consistent with Section 224 of the Communications Act of 1934. Where a utility has access to a roof, such access is a "right-of-way" within the meaning of 224 and other telecommunications carriers, including wireless carriers, such as WinStar, have a right of nondiscriminatory access under Section

224(f)(1). With respect to this issue, GTE's reversal of position occurred after the petition was filed in this case. GTE provides no reasonable basis to distinguish access to roofs it owns or controls for placement of WinStar's distribution equipment from access to other rights-of-way. GTE's refusal to provide such access is clearly discriminatory.

GTE's refusal to provide access to roofs it owns or controls has the effect both of increasing WinStar's costs and at the same time denying access to WinStar to any non-GTE tenants in the buildings. Through such a denial, GTE can eliminate WinStar as a substitute provider of links to a competitive carrier seeking to serve that building, thus reinforcing GTE's existing monopoly.

(d-f) WinStar offers the following prehearing positions on the questions of law, fact and public policy identified for disposition in this docket.

1. **Issue:** Should the Commission require GTE to include a most favored nation provision in its interconnection and resale agreement with WinStar which permits WinStar to unilaterally adopt specific provisions of GTE's arbitrated and negotiated agreements with other parties without adopting the remaining provisions of such agreements?

Position: Yes. The appropriate most favored nation provision is one which permits WinStar to utilize any term or condition contained in an interconnection agreement GTE has entered into with any other local exchange service provider.

2. **Issue:** Should the Commission require GTE to provide access to the roofs of buildings it owns or controls for purposes other than interconnection with its facilities?

Position: Yes. WinStar should be provided access to any GTE owned or controlled roof for the purpose of placing its telecommunications distribution equipment.

(g) a statement of issues that have been stipulated to by the parties;

The parties have resolved the following issues which appear in the WinStar/GTE

Interconnection Agreement:

- 1. Network Interconnection Architecture**
- 2. Number Resource Arrangements**
- 3. Meet Point Billing Arrangements**
- 4. Reciprocal Traffic Exchange Arrangement**
- 5. Shared Network Platform Arrangements**
- 6. Unbundled Exchange Service Arrangements**
- 7. Local Telephone Number Portability Arrangements**
- 8. Responsibilities of the Parties**
- 9. Term**
- 10. Installation and Maintenance**
- 11. Network Maintenance and Management**
- 12. Access to Rights-of-Way -- except with respect to issue 2**
- 13. Resale**
- 14. Cancellation, Conversion, Non-Recurring or Roll-Over Charges**
- 15. Force Majeure**
- 16. Confidential Information**
- 17. Liability and Indemnity**
- 18. Dispute Resolution**

19. **Miscellaneous**

- a. amendments
- b. assignment
- c. compliance with laws and regulations
- d. default
- e. notices

(h) a statement of all pending motions or other matters the party seeks action upon;

WinStar is unaware of any pending motions.

(i) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefor.

None.

Respectfully submitted,

Robert G. Berger
Vice President, Regulatory/Legal
WINSTAR TELECOMMUNICATIONS, INC.
1146 19th Street, Suite 200
Washington, D.C. 20036
Phone: (202) 530-7655
Fax: (202) 530-0977


Richard M. Rindler
SWIDLER & BERLIN, CHARTERED
3000 K Street, N.W., Ste. 300
Washington, D.C. 20007-5116
Phone: (202) 424-7500
Fax: (202) 424-7645

**Counsel for WinStar Wireless of
Florida, Inc.**

Dated: January 6, 1997

CERTIFICATE OF SERVICE

Docket No. 960979-TP

I hereby certify that on this 3rd day of January 1997 copies of the Prehearing Statement of WinStar Wireless of Florida, Inc. and Rebuttal Testimony of Robert G. Berger were served by overnight mail on the following:

**Martha Carter-Brown
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399**

**Anthony P. Gillman
GTE Telephone Operations
One Tampa City Center
P. O. Box 110, FLTC0007
Tampa, Florida 33601**

**Michael A. Marczyk
Senior Account Manager - Carrier Markets
GTE Telephone Operations
One Tampa City Center
P. O. Box 110, FLTC0007
Tampa, Florida 33601**

**P.A. Daks, President
GTE Florida
One Tampa City Center
Tampa, FL 33601**

**Beverly Y. Menard, SCTCO610
Regulatory and Industry Affairs
GTE
201 North Franklin Street
Tampa, FL 33602**

**Kirby D. Cantrell, Sr.
Administrator
IC Technical Support, FLTC0009
GTE Telephone Operations
One Tampa City Center
Tampa, FL 33601-0110**



Richard Rindler