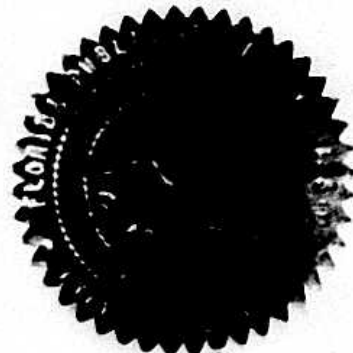


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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of
Petition by WinStar Wireless
of Florida, Inc. for
arbitration of certain terms
and conditions of a proposed
agreement with GTE Florida
Incorporated concerning
resale and interconnection
pursuant to 47 USC Section
252(B) of the
Telecommunications Act
of 1996.

DOCKET NO. 960979-TP



PROCEEDINGS: PREHEARING CONFERENCE

BEFORE: COMMISSIONER DIANE K. KIESLING
Prehearing Officer

DATE: Friday, January 10, 1997

TIME: Commenced at 10:00 a.m.
Concluded at 10:30 a.m

PLACE: Betty Easley Conference Center
Room 152
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: ROWENA NASH
Official Commission Reporter

DOCUMENT NUMBER-DATE

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FPSC-RECORDS REPORTING

1 **APPEARANCES:**

2 **RICHARD N. RINDLER, Swidler & Berlin,**
3 **Chartered, 3000 K Street, N. W., Suite 300,**
4 **Washington, D. C. 20007, Telephone No. (202) 424-7604,**
5 **appearing on behalf of WinStar Wireless of Florida,**
6 **Inc.**

7 **ANTHONY GILLMAN, GTE Florida Incorporated,**
8 **Post Office Box 110, FLTC0007, Tampa, Florida 33601,**
9 **appearing on behalf of GTE Florida Incorporated.**

10 **MARTHA CARTER BROWN, Florida Public Service**
11 **Commission, Division of Legal Services, 2540 Shumard**
12 **Oak Boulevard, Tallahassee, Florida 32399-0870,**
13 **appearing on behalf of the Commission Staff.**

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P R O C E E D I N G S

(Hearing convened at 10:00 a.m.)

COMMISSIONER KIBSLING: Call the hearing to order. Counsel, would you please read the notice?

MS. BROWN: By notice issued January 3, 1997, this time and place was set for a prehearing conference in Docket No. 960979-TP, petition by WinStar Wireless of Florida, Inc. for arbitration of certain terms and conditions of a proposed agreement with GTE Florida Incorporated concerning resale and interconnection pursuant to 47 USC Section 252(B) of the Telecommunications Act of 1996. The purpose of the prehearing conference is set out in the notice.

COMMISSIONER KIBSLING: And enter your appearances, please.

MR. GILLMAN: Commissioner Kiesling, my name is Tony Gillman. I'm appearing on behalf of GTE Florida Incorporated. And Beverly Menard, our witness in this case, is also here.

COMMISSIONER KIBSLING: All right.

MR. RINDLER: Good morning. Richard Rindler with Swidler and Berlin, 3000 K Street, Washington, D.C., appearing on behalf of WinStar Wireless of Florida, Inc.

MS. BROWN: Martha Carter Brown on behalf of

1 the Florida Public Service Commission Staff, 2540
2 Shumard Oak Boulevard, Tallahassee 32399-0850.

3 COMMISSIONER KIBSLING: Are there any
4 preliminary matters that we need to take up?

5 MS. BROWN: No, Commissioner. There are no
6 preliminary matters that I'm aware of.

7 COMMISSIONER KIBSLING: Anyone else have
8 any? All right. Then we'll go ahead and run through
9 the Prehearing Order. Are there any changes or
10 corrections to the appearances?

11 How about the case background?

12 MS. BROWN: Yes, Commissioner, I found a
13 typo on Page 2 where it is says, "Pursuant to the
14 provisions of Section 120.57(2)," it should be Florida
15 Statutes.

16 COMMISSIONER KIBSLING: Should be -- yes, I
17 see it now.

18 MS. BROWN: Rather than Florida
19 Administrative Code.

20 COMMISSIONER KIBSLING: Okay. Any questions
21 about any of the procedural matters that are laid out?
22 And how about the order of witnesses? Are they where
23 you want them? Everybody is happy?

24 MS. BROWN: Commissioner, I have one
25 question on that. I have put in here that WinStar's

1 witnesses, Mr. Berger and Mr. Simons will address all
2 issues. I just wanted to check to make sure that was
3 correct.

4 MR. RINDLER: Well, to the extent that the
5 technology issue underlies both the issues, I believe,
6 yes, it would be correct.

7 MS. BROWN: Okay.

8 MR. GILLMAN: Also, are we also going to do
9 all the testimony at once; supplemental, rebuttal, and
10 direct?

11 COMMISSIONER KIESLING: Well, this only
12 shows direct, so --

13 MS. BROWN: We'll that's true. We'll need
14 to fix that. Whatever the parties and the
15 Commissioner wants.

16 COMMISSIONER KIESLING: And that's
17 acceptable to everyone, just do it all?

18 MR. RINDLER: Yes.

19 COMMISSIONER KIESLING: Okay. Do each of
20 them have direct, rebuttal, and supplemental?

21 MR. RINDLER: No. Mr. Simons only filed one
22 round of testimony.

23 COMMISSIONER KIESLING: So that would be
24 direct only for him, or rebuttal only? Which?

25 MR. RINDLER: It was actually supplemental.

1 There were three rounds.

2 COMMISSIONER KIESLING: What did it
3 supplement?

4 MR. RINDLER: The direct. What happened was
5 there was direct testimony, then there was the
6 agreement on a number of the issues. We then filed
7 supplemental to the direct, which his wasn't
8 supplementing his own testimony, it was supplemental a
9 round. So we could call his direct supplemental.

10 MR. GILLMAN: Ms. Menard just has direct.

11 COMMISSIONER KIESLING: Okay. Then on the
12 basic position, I have a question or a problem with
13 the basic positions that are set out here, and most
14 particularly, WinStar's. In my mind, it doesn't set
15 out a position, it sets out your entire argument. And
16 my reading of our procedural requirements is that it's
17 supposed to be a basic statement of your position and
18 not an argument.

19 And the reason I'm bringing it up is I'm
20 finding more and more in the Prehearing Orders that
21 parties are getting away from putting a nice short
22 statement of what they are doing here and wanting to
23 make their whole argument on paper. And that, I
24 think, is just overcomplicating the Prehearing Order
25 which is just simply supposed to be an outline of what

1 **COMMISSIONER KIESLING:** Okay.

2 **MR. RINDLER:** On Page 6, the paragraph that
3 begins under the section, I would leave the first two
4 sentences and strike out the sentence "With respect to
5 this issue."

6 **COMMISSIONER KIESLING:** Okay.

7 **MR. RINDLER:** I would then strike out the
8 last paragraph.

9 **COMMISSIONER KIESLING:** That's wonderful. I
10 appreciate the effort to do that.

11 **MS. BROWN:** Commissioner, may I ask one
12 question?

13 **COMMISSIONER KIESLING:** Sure.

14 **MS. BROWN:** Mr. Rindler, on Page 6, you said
15 strike the sentence "With respect to this issue."

16 **MR. RINDLER:** Yes, ma'am.

17 **MS. BROWN:** Did you mean to leave the last
18 sentence -- the last two sentences?

19 **MR. RINDLER:** Yes, I did.

20 **COMMISSIONER KIESLING:** Oh, I'm sorry. I
21 misunderstood that part then.

22 Okay. I mean, it just seems to me that the
23 parties should be able -- especially in a case that
24 only has two issues -- to be able to state their
25 position in less than one page, so --

1 **MR. GILLMAN:** Commissioner Kiesling?

2 **COMMISSIONER KIESLING:** Yes.

3 **MR. GILLMAN:** I've also revised mine and did
4 have the opportunity to kind of cut and paste last
5 night.

6 **MS. BROWN:** Want to see?

7 **COMMISSIONER KIESLING:** Sure.

8 **MR. GILLMAN:** I have an extra one. And have
9 provided it to the Staff with a disk.

10 **COMMISSIONER KIESLING:** Okay, that's great.
11 That looks also much shorter. Have you given a copy
12 to Mr. Rindler? Thank you.

13 And I guess the only way we can shorten
14 Staff's is if we just said Staff has no basic
15 position, but --

16 **MS. BROWN:** We're happy to do that, if you
17 like.

18 **COMMISSIONER KIESLING:** I won't get carried
19 away with this.

20 Are there any other changes or questions
21 about the basic positions? If not, then we will go to
22 Issue 1.

23 I'm a little bit confused about whether
24 there are two issues here. One, can the Commission do
25 this. And then the second one is, if yes, should it

1 do it. And if I'm overreading this, you know, let me
2 know.

3 But for me it seems clear if in the third
4 line of the issue where it says "which permits,"
5 although it adds more words, I think it clarifies to
6 say, instead of "which permits," to say, "where such a
7 clause would permit." Because I don't know what the
8 "which" refers back to, whether it refers back to the
9 Commission, the most favored nation clause, or the
10 agreement. If you can understand my problem.

11 MR. RINDLER: Could you just tell me what
12 you are substituting for "which"?

13 COMMISSIONER KIESLING: Instead of "which
14 permits," I'm putting in "where such a clause would
15 permit." And if that doesn't change everyone's
16 intent, I hope it makes it a little clear since I had
17 trouble understanding what the "which" referred to.

18 MR. GILLMAN: I think that's fine with me.

19 COMMISSIONER KIESLING: Okay.

20 MR. RINDLER: I have no problems with it.

21 MS. BROWN: Staff has no problems. And as I
22 think I explained to the parties and you earlier, we
23 originally had this as two issues; but we believe we
24 can address all aspects of it in the way it's worded
25 here.

1 **COMMISSIONER KIESLING:** Okay. Again, does
2 GTE have any more abbreviated language?

3 **MR. GILLMAN:** On the same pleading that I
4 gave you, it's on there.

5 **COMMISSIONER KIESLING:** Okay. Great.
6 Thanks. I see you also have one for the next one.

7 And are there any changes to WinStar's
8 position?

9 **MR. RINDLER:** No, ma'am. I think I was
10 trying to meet the 50-word rule there.

11 **COMMISSIONER KIESLING:** I think that you did
12 a good job of meeting the 50-word rule. And I'm not
13 going to sit here and count yours, but you are getting
14 closer.

15 **COMMISSIONER KIESLING:** On Issue 2, any
16 changes, additions, corrections or -- other than GTE's
17 shortening of its position to get closer to the
18 50-word rule. Nothing else?

19 **MS. BROWN:** Commissioner Kiesling, before we
20 move on to the exhibit list, I have to bring something
21 up that I --

22 **COMMISSIONER KIESLING:** Yes.

23 **MS. BROWN:** -- I think that I overlooked.
24 And Stan has just pointed it out to me. We don't have
25 in this issue list our usual procedural postdecision

1 issues. We usually have an issue that says: Should
2 the agreement be approved pursuant to 252, and what
3 postdecision procedures are appropriate. I don't know
4 if the parties would have any problems with that, and
5 I apologize for not having addressed this earlier.

6 **COMMISSIONER RIESLING:** Well, let me ask a
7 question to help me understand. We have -- as a
8 Commission, we have already voted on that on at least
9 two different occasions about which standard applies
10 and what the postorder procedures are going to be. Do
11 we need to continue to include that, or do those two
12 orders set out what our position is, and that's what
13 it is, unless somebody else specifically raises it?

14 **MS. BROWN:** Well, I'm a little hesitant to
15 leave them out. I'm a little hesitant to leave out
16 the sort of boilerplate: Should the agreement be
17 approved, pursuant to 252(E), because of the way we
18 have structured these arbitration proceedings, I read
19 the Telecommunications Act to contemplate an ALJ
20 handling the arbitration part, and then the Commission
21 comes back later and approves the agreement. We have
22 not done that. We have collapsed, pretty much, those
23 two rolls into the Commission itself. And we have
24 included that issue in order to make sure that it is
25 memorialized that the Commission believes it has

1 arbitrated -- made its arbitration decision pursuant
2 to the requirements of the Act. That's why that issue
3 was originally put in there. And I don't want to take
4 it out really.

5 Now, as to the second one, I'm a little
6 hesitant on that. But also, I'd like to see what the
7 parties have to say. And the reason I am is not that
8 we have to argue the standard any more, which I don't
9 think we do, although we may want to at some point.

10 COMMISSIONER KIESLING: Yeah. Unless
11 someone brings it up, because we'll need to look at
12 it.

13 MS. BROWN: But we still do need to
14 determine when the parties are going to submit an
15 agreement to the Commission for approval, we still
16 need -- now, I don't know whether that needs to be an
17 issue resolved. It perhaps could go in our Staff
18 recommendation as the posthearing procedure that Staff
19 recommends.

20 COMMISSIONER KIESLING: That's where it's
21 been in the last two cases. It was not in the
22 Prehearing Order because it was procedural. It was in
23 the Staff rec that we voted on.

24 MS. BROWN: And that's fine with me. I'm
25 only hesitant because -- and I'm hesitant just to take

1 something out or not include it because we've already
2 done it. Because in these arbitration proceedings I
3 consider them to be quite unique or the possibility
4 that they could be unique in each one because they are
5 limited to the particular circumstances and facts of
6 the parties. But if we could keep in the first one,
7 which I think we have had had in before, in each one.

8 **COMMISSIONER KIESLING:** We have had it in
9 some and not in others, if I recall correctly.

10 **MS. BROWN:** I mean, it's really probably not
11 essential, but I have forgotten --

12 **COMMISSIONER KIESLING:** Make it a litigated
13 issue?

14 **MS. BROWN:** No. I don't think it's an issue
15 that the parties are concerned with. Maybe they need
16 to --

17 **MR. GILLMAN:** The only thing that comes to
18 mind from more of a practical standpoint, we've
19 already filed an agreement, except for these two
20 issues, to be approved. And I don't think we should
21 have to redo that, have to file a new agreement
22 similar to what's being done in the AT&T and Sprint
23 cases where we didn't have an agreement with them.

24 **MS. BROWN:** I didn't envision that the
25 agreement, quote/unquote, that comes out of this

1 arbitration would interfere or affect the previous
2 agreements.

3 MR. GILLMAN: We would just submit, I guess,
4 just the two revised provisions or unrevised
5 provisions.

6 MS. BROWN: Yes. That's the way I would
7 view it. And your negotiated agreement would stay on
8 its time frame for approval.

9 MR. GILLMAN: With that, I don't have a
10 problem with adding or not adding the issue.

11 MR. RINDLER: Commissioner, it's my
12 recollection that this has not been a litigated issue
13 in any of these proceedings, that Staff raised it in
14 the very first proceeding, the NFS proceeding. And
15 nobody had a problem with it in that proceeding, and I
16 don't think anybody's had a problem with it since
17 then. So I'm perfectly fine with having it out.

18 COMMISSIONER KIESLING: That's my feeling,
19 too, that it's not a litigated issue.

20 MS. BROWN: No, it's not, not really. The
21 posthearing procedures part had its complications with
22 respect to the standards.

23 COMMISSIONER KIESLING: Absolutely.

24 MS. BROWN: But that's pretty much taken
25 care of.

1 **COMMISSIONER KIESLING:** And what isn't taken
2 care of will be taken care of at the agenda conference
3 when we vote.

4 **MS. BROWN:** Sure.

5 **COMMISSIONER KIESLING:** Go ahead and put it
6 in as a procedural issue there, but it doesn't have to
7 be litigated here.

8 **MS. BROWN:** Okay, that's fine. Make it
9 easier.

10 **COMMISSIONER KIESLING:** That's what I
11 thought. Exhibits, any changes, additions, or
12 corrections? I'll start with Mr. Berger's.

13 **MR. RINDLER:** No, ma'am. That's fine.

14 **COMMISSIONER KIESLING:** Okay. And he's the
15 only one that's got exhibits? What? This can't be.

16 **MR. RINDLER:** Mr. Simons also has one that's
17 listed; the last under Mr. Berger, but his name is not
18 there.

19 **COMMISSIONER KIESLING:** Okay.

20 **MR. GILLMAN:** No exhibits to Ms. Menard's
21 testimony.

22 **COMMISSIONER KIESLING:** You picked up where
23 the name goes? Okay.

24 And are there any proposed stipulations?

25 **MR. GILLMAN:** Not in this case, but we

1 stimulated everything else in the form of an agreement
2 that was filed in another docket.

3 **COMMISSIONER KIESLING:** Okay. I think I
4 was -- in at least reading the prehearing, and granted
5 I have not read the testimony yet, it seemed to me
6 that there might be some possibility of a stipulated
7 record in terms of some of the witnesses. But I'm not
8 pushing you to do something you are not comfortable
9 with. But it didn't seem like there was much in the
10 way of a factual dispute. Did it not come through
11 well to me?

12 **MR. GILLMAN:** I don't envision stipulating
13 Mr. Berger's testimony --

14 **COMMISSIONER KIESLING:** Okay.

15 **MR. GILLMAN:** Possibly, Mr. Simons.

16 **COMMISSIONER KIESLING:** Okay. And I take it
17 you don't anticipate stipulating Ms. Menard's?

18 **MR. RINDLER:** I'll have to be candid and say
19 I hadn't really looked at it with that in mind. I
20 know the parties had spent a fair amount of time
21 attempting to come up with a stipulated set of facts
22 and were unable to do so, so I expect there are issues
23 that I would have to explore.

24 **COMMISSIONER KIESLING:** Okay. Well, if you
25 do come up with any stipulations, certainly let us

1 know as soon as possible. And I take it that the time
2 we have set aside for this hearing is adequate.

3 MR. GILLMAN: A day.

4 MS. BROWN: Probably more than adequate.

5 MR. GILLMAN: I think so.

6 MR. RINDLER: For the time being, a day, I
7 would certainly think so.

8 COMMISSIONER KIESLING: Well, and I can tell
9 you that I'm already looking at scheduling something
10 that afternoon for me, so if I'm being overly
11 optimistic --

12 MR. GILLMAN: I mean, I'm not sure it would
13 be done by noon.

14 COMMISSIONER KIESLING: No, no. I'm looking
15 at 1:30. I would have to get on a conference call.

16 MR. RINDLER: We're beginning at 9:30? I'd
17 put my money on noon.

18 COMMISSIONER KIESLING: It is 9:30?

19 MS. BROWN: Yes.

20 COMMISSIONER KIESLING: This isn't one of
21 those where you tricked me and put it at 9:00 just so
22 that I could be late?

23 MS. BROWN: No, ma'am, it's 9:30.

24 COMMISSIONER KIESLING: Then is there
25 anything else that needs to be taken up? If not,

1 we'll adjourn the hearing and get this out as soon as
2 possible.

3 (Thereupon, the hearing concluded at
4 10:30 a.m.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

: CERTIFICATE OF REPORTER

3 I, ROWENA NASH Official Commission Reporter,

4 DO HEREBY CERTIFY that the Prehearing
5 Conference in Docket No. 960979-TP was heard by the
6 Florida Public Service Commission at the time and
7 place herein stated; it is further

8 CERTIFIED that I stenographically reported
9 the said proceedings; that the same has been
10 transcribed under my direct supervision; and that this
11 transcript, consisting of 19 pages, constitutes a true
12 transcription of my notes of said proceedings

13

DATED this 13 day of January, 1997.

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ROWENA NASH
Official Commission Reporter
(904) 413-6736