

ORIGINAL

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02 MAR 19 AM 11:00  
COMMISSION CLERK

March 18, 2002

## VIA OVERNIGHT DELIVERY

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

020054-TP

DISTRIBUTION CENTER  
02 MAR 19 AM 9:23

### **Re: Notification of Winstar Wireless, Inc. and Winstar Communications, LLC of Discontinuance of Certain Services in the State of Florida**

Dear Ms. Bayo:

Winstar Wireless, Inc. ("Old Winstar"), and Winstar Communications, LLC ("New Winstar" and, when used collectively, "Winstar" or "Parties") respectfully notify the Commission that Winstar will discontinue certain telecommunications services in the State of Florida.<sup>1</sup> Specifically, Winstar intends to discontinue only its Facilities-Based Wireline Services, which are facilities-based local exchange and interexchange telecommunications services that are being provided using wireline facilities leased from underlying carriers (as opposed to Winstar's own fixed wireless services). In connection with this Notification, the Parties provide the following information:

#### **I. Background**

As the Commission is aware, Old Winstar and certain of its affiliates filed for bankruptcy on April 18, 2001 and currently operate under the protection of the U.S. Bankruptcy Code before the U.S. District Court for the District of Delaware ("Bankruptcy Court"). Since that time, Old Winstar has undertaken an extensive review of its operations to determine what changes may be appropriate and necessary to enable the operations to become more economically efficient.

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OTH \_\_\_\_\_

The customers whose services will be discontinued pursuant to this Notice are all currently still being served by Old Winstar pending transition of their underlying service to New Winstar's interconnection and other agreements. However, as discussed below, Parties are still in the process of completing the necessary agreements, and transition of customers from Old Winstar. Since the discontinuance may actually occur after that process is completed, the Parties are filing this Notice jointly.

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BUREAU OF RECORDS

On December 19, 2001, the Bankruptcy Court approved the sale of the core domestic assets of Winstar Communications, Inc., the ultimate parent of Winstar, to Winstar Holdings, LLC. As the sale contemplated the transfer of assets, including customers, of Old Winstar to New Winstar, a subsidiary of Winstar Holdings, LLC, and ultimately IDT Corporation, the Parties have sought the necessary federal and state regulatory authority, including seeking approval from this Commission for the transfer of assets.<sup>2</sup> During the 120-day transition period established by the Bankruptcy Court for purposes of obtaining regulatory approvals and transitioning services, the Parties have continued the review of the operations of Old Winstar to make final determinations as to how New Winstar will operate in the future and, more specifically, what changes to the pre-existing Old Winstar business plan are needed in order for New Winstar to provide high quality competitive telecommunications services at economical rates to customers and to operate in a way that will assure its long term ability to remain a viable competitor in the marketplace. As described below, Old Winstar in consultation with New Winstar, has now determined that continued provision of Wireline Facilities-Based Service, which relies upon the resale of certain local services provided by competing carriers, must be discontinued because such services cannot currently be provided in a way that would permit New Winstar to offer them at cost-competitive rates to subscribers and are therefore not financially viable. Therefore, Parties desire to discontinue Wireline Facilities-Based Services to its customers before April 17, 2002 when the transition period established by the Bankruptcy Court ends.

Winstar could not have filed the Discontinuance Notification as part of or at the same time as the Transfer Application because New Winstar had not, as of that time, had an opportunity before the Bankruptcy Court's Sale Order to review in detail the operations of Old Winstar.<sup>3</sup> Since that time, as the Parties determined that certain of Old Winstar's services are not viable, they have promptly taken steps to comply with the applicable discontinuance rules at the Federal Communications Commission ("FCC") and state regulatory commissions.<sup>4</sup> Within the last week, New Winstar has made a decision that upon taking control of the network it will be unable to continue the Facilities-Based Wireline Service. Old Winstar promptly notified all of its existing affected customers and the Parties are promptly filing this Notice. A copy of the discontinuance notice sent to customers is attached hereto as Exhibit A.

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<sup>2</sup> See In re: 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, Docket No. 020054-TP (Mar. 12, 2002) ("Transfer Application"). The Commission issued a Notice of Proposed Agency Action to approve the Transfer Application on March 12, 2002. See Order No. PSC-02-0321-PAA-TP, Docket No. 020054-TP (the protest period ends April 2, 2002).

<sup>3</sup> Although it would certainly have been preferable to make such determinations prior to the purchase, the exigencies of the bankruptcy proceeding and Old Winstar's financial condition did not permit New Winstar to completely review Old Winstar's operations and obligations, since there was an imminent threat that Old Winstar would have been forced to discontinue service precipitously, absent the funding provided by New Winstar.

<sup>4</sup> Between February 14 and 22, 2002, Winstar filed to discontinue all (wireline and wireless) facilities-based services in certain markets in Indiana, Kansas, Missouri, Ohio, Texas, and Wisconsin. On February 22, 2002, Winstar also filed an application with the FCC to discontinue service in such markets.

## **II. Contacts**

Correspondence or communications pertaining to this Notice should be directed to Old Winstar's counsel:

Jean L. Kiddoo, Esq.  
Brett P. Ferenchak, Esq.  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20006-5116  
(202) 424-7834 (Tel)  
(202) 424-7645 (Fax)  
JLKiddoo@swidlaw.com (E-Mail)  
BPFerenchak@swidlaw.com (E-Mail)

with a copy to:

Kimberley A. Bradley  
Senior Director of Regulatory Affairs  
Winstar Wireless, Inc.  
1850 M Street, N.W., Suite 300  
Washington, D.C. 20036  
(202) 367-7654 (Tel)  
(202) 659-1931 (Fax)  
kbradley@winstar.com (E-Mail)

Old Winstar's toll-free customer service telephone number for customer inquiries concerning this discontinuance is (888) 898-3334.

## **III. Description Of Discontinuance**

### **A. Name and Address of Carriers**

Winstar Wireless, Inc. maintains its principal place of business at:

Winstar Wireless, Inc.  
2350 Corporate Park Drive  
Herndon, Virginia 20171

Winstar Communications, LLC maintains its principal place of business at:

Winstar Communications, LLC  
520 Broad Street  
Newark, New Jersey 07102

**B. Description of Type of Service Affected**

Winstar intends to discontinue the provision of only its Facilities-Based Wireline Services, including both local exchange and interexchange telecommunications services in Florida. These are services in which Winstar purchases local facilities from an underlying carrier (most often the incumbent local exchange carrier ("ILEC"), but at times another competitive local carrier ("CLEC")) which it uses to deliver subscribers' calls to the Winstar switch. Other Old Winstar services will not be affected by this discontinuance.<sup>5</sup>

**C. Date of Planned Service Discontinuance**

Winstar anticipates discontinuing only Facilities-Based Wireline Services on or before April 17, 2002, or as soon as reasonably possible upon completion of the necessary federal and state regulatory notice periods and, where necessary, receipt of approvals, and/or the transition of all Facilities-Based Wireline Services customers to the services of other carriers.

**D. Points of Geographic Areas of Service Affected**

Winstar will be discontinuing only Facilities-Based Wireline Services in Florida. Primarily, the affected customers are located in the Miami, Orlando, and Tampa metropolitan areas. The discontinuance of services described above will affect approximately 326 customers in Florida.

**E. Dates and Methods of Notice to All Affected Customers**

Individual written notice was provided to each customer impacted by the proposed discontinuance via first class mail on March 15, 2002. A copy of the notice is attached hereto as Exhibit A. The notice identifies the services that Winstar is seeking to discontinue and the date on which the discontinuance is expected to occur. The notice also provides Winstar's customers with a toll-free customer service number and website reference for information and questions relating to the discontinuance or for assistance in selecting a new service provider.

**F. Ongoing Efforts to Provide for Continuity of Service**

In addition to providing affected customers notice of the discontinuance, Winstar will be taking additional steps to help provide for continuity of their service. Winstar's customer service department will monitor the transition of customers away from its network and will, where

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<sup>5</sup> Old Winstar currently also provides local exchange and interexchange services in Florida through Old Winstar's fixed wireless facilities at their buildings ("Fixed Wireless Services"), which avoid the need to use another carrier's facilities to reach a subscriber premises, and also provides local services through "full service" resale of the local services of the ILEC ("Local Resale Services"). In certain areas Old Winstar also provides long distance services to customers on a presubscribed basis using ILEC access facilities ("Long Distance Services"). Old Winstar is not seeking to discontinue the provision of such Fixed Wireless Services, Local Resale Services, or Long Distance Services by this Notification. Should Winstar determine that it will also discontinue additional classes of service in Florida in the future, it will make the appropriate filing with this Commission.

appropriate, call customers who have not responded to the discontinuance or switched to another carrier within a short period following the notice. In addition, through its website, Winstar is providing customers with a list of some of the alternative carriers that provide service in the customer's service area. Winstar will also work with alternative carriers to effectuate a seamless transition of the affected customer to the alternative carrier's network.

#### **G. Treatment of Customer Deposits and Final Bills**

Old Winstar does not generally require deposits of its subscribers, and is currently reviewing the accounts of customers affected by the discontinuance to determine whether any deposits were collected from these customers. Once the customer has been transitioned off the Winstar network, they will be issued a final bill for any outstanding balances.

#### **IV. Circumstance Of Discontinuance**

Since the Transaction was approved by the Bankruptcy Court, Old and New Winstar have concentrated on a managed, orderly transition of the business and reevaluation of the business plan. As a result of this concerted effort to assure that the new company will not face the financial difficulties that brought Old Winstar to bankruptcy, the management determined that certain types of services are not appropriate for New Winstar's business plan because of the large financial losses that would be incurred if such service is continued. Specifically, financial analysis by New Winstar indicates that the Wireline Facilities-Based Services that are being discontinued have been a large reason for the losses suffered by Old Winstar and therefore contributed significantly to its financial decline and the resulting uncertainty and possibility of disruption for its customers. Indeed, recent analysis by New Winstar indicates that such services represent approximately 48% of the cost of revenue for the provision of switched network voice telephony, while only accounting for approximately 12.5% of its customers. In fact, the cost involved in providing Wireline Facilities-Based Services, according to analysis by New Winstar, is approximately 130% of the revenue those services produce, yet a rate increase sufficient to make the services profitable would be competitively impossible. Clearly, losses of this magnitude were a major factor contributing to the need for Old Winstar to seek Chapter 11 status. It therefore would be imprudent in the extreme to perpetuate the same losses going forward, and the drain on New Winstar's cash flow would put pressure on its service rates for its Wireless Services. Therefore, Winstar is realistically faced only with the option to discontinue these services.

#### **V. Public Interest Considerations**

Winstar's disconnection of certain customers in Florida, while regrettable, is necessary and appropriate, and will not adversely affect the public convenience and necessity. The public will not be unduly harmed by Old Winstar's discontinuance of the telecommunications service described above because customers have been given notice which affords them an opportunity to transfer to a new carrier. As indicated herein, Winstar is also undertaking and will continue to undertake a comprehensive customer notification initiative that is aimed at providing affected customers with sufficient notice and opportunity to select another provider so as to avoid service disruption.

**VI. Conclusion**

An original and seven (7) copies of this letter are enclosed. Kindly date stamp and return the enclosed extra copy of this letter. Winstar will proceed as described above as soon as possible. Therefore, Winstar respectfully requests that the Commission notify the Parties promptly if it has any questions regarding the proposed transactions or believes that further action is required.

Respectfully submitted,

Handwritten signature in black ink that reads "Jean L. Kiddoo/BPF". The signature is written in a cursive, slanted style.

Jean L. Kiddoo, Esq.  
Brett P. Ferenchak, Esq.

Counsel to Parties

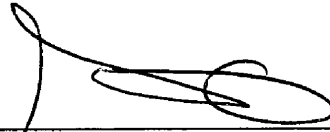
Enclosure

cc: Tommy Williams (PUC) (via fax)  
Kimberley A. Bradley  
Carl Billek

**VERIFICATION**

I, Geoffrey Rochwarger, state that I am Chief Operating Officer of Winstar Communications, LLC, a Party in the foregoing Notification; that I am authorized to make this Verification on behalf of Winstar Communications, LLC; that the foregoing was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th day of March, 2002.



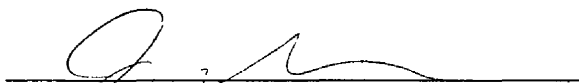
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Name: Geoffrey Rochwarger  
Title: Chief Operating Officer  
Winstar Communications, LLC

**VERIFICATION**

I, Joseph M. Sandri, Jr., state that I am Senior Vice President and Regulatory Counsel of Winstar Wireless, Inc., a Party in the foregoing Notification; that I am authorized to make this Verification on behalf of Winstar Wireless, Inc.; that the foregoing was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15<sup>th</sup> day of March, 2002.



Name: Joseph M. Sandri, Jr.  
Title: Senior Vice President and Regulatory Counsel  
Winstar Wireless, Inc.



**EXHIBIT A**

Customer Notice Letter

Winstar Wireless, Inc.  
5151 Blazer Parkway, Suite A  
Dublin, OH 43017



**NOTICE OF TELEPHONE SERVICE DISCONTINUANCE**  
**DO NOT DISREGARD THIS NOTICE**

March 15, 2002

Master Account Number: 4250507595  
Service Address: TAMPA, FL 33602  
Dear Winstar Customer:

We regret to inform you that Winstar will no longer be able to provide the services that your business currently receives at the service address listed above. Therefore, Winstar must discontinue all LOCAL, LONG DISTANCE, TOLL FREE and INTERNET SERVICES you receive at the above-referenced service address. Subject to regulatory approval, the anticipated date for the discontinuance of your service is April 15, 2002.

This service discontinuance only affects the type of Winstar services provided at the address identified above. If you have business offices in other locations served by Winstar, those locations will not be impacted unless you are otherwise notified. We are eager to help you minimize any inconvenience this action may cause.

**You must select a new carrier as soon as possible to avoid any interruption of service.** Please do not delay in arranging for a new service provider as some carriers may require several weeks to install new services. To help avoid service disruption, please check carefully that all service types you currently have with Winstar (local, long distance, toll free, calling card and/or Internet) are moved to your new carrier. Once you have chosen your new provider, Winstar will work with the carrier you have selected to ensure a smooth transition of your service.

The Federal Communications Commission ("FCC") permits customers to object to discontinuance of their service by a telecommunications provider. As provided in the FCC's rule 47 CFR 63.71:

*The FCC will normally authorize this proposed discontinuance of service unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments within 15 days after receipt of this notification. Address them to the Federal Communications Commission, Washington, D.C. 20554, referencing the Section 63.71 Application of Winstar Wireless, Inc. Comments should include specific information about the impact of this proposed discontinuance upon you or your company, including any inability to acquire reasonable substitute service.*

In addition to sending written comments to the Federal Communications Commission at the above address, a copy of your comments should be sent via facsimile to Jon Minkoff, Attorney, FCC Network Services Division at 202-418-2345.

Winstar appreciates the opportunity we have had to serve you. As you were advised in a February 14<sup>th</sup> letter, the Company has been working to transfer your service to a new company, but unfortunately has been unable to do so. We are committed to your complete satisfaction during this transition period. If you have any questions regarding the discontinuance of your service, please contact us at 1-888-898-3334 or visit [http://www.winstar.com/customer\\_care/private](http://www.winstar.com/customer_care/private). Please check the website frequently for updates. Your master account number (listed above) is required to access the website information regarding this notification.

Sincerely,

Winstar Wireless, Inc.