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April 2, 2002

Ms. Blanca S. Bayo, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

RECEIVED FPSC  
02 APR -2 AM 11:07  
COMMISSION  
CLERK

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:

Please find enclosed an original and 15 copies of Verizon Florida Inc.'s Petition  
Protesting Proposed Agency Action Order Approving Assignment of Assets and  
Alternative Local Exchange Telecommunications and Interexchange Telecommuni-  
cations Certificates for filing in the above matter. Service has been made as  
made as indicated on the Certificate of Service. If there are any questions regarding  
this matter, please contact me at 813-483-2617.

Sincerely,

Kimberly Caswell

- AUS \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM KC:tas
- CTR Enclosures
- ECR \_\_\_\_\_
- GCL \_\_\_\_\_
- OPC \_\_\_\_\_
- MMS \_\_\_\_\_
- SEC \_\_\_\_\_
- OTH Henry

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

03726 APR-28

FPSC-COMMISSION CLERK

DISTRIBUTION CENTER  
02 APR -2 AM 10:24

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Emergency joint application for approval ) Docket No. 020054-TP  
of assignment of assets and AAV/ALEC ) Filed: April 2, 2002  
Certificate No. 4025 and IXC Certificate No. )  
2699 from Winstar Wireless, Inc. to )  
Winstar Communications, LLC. )  
\_\_\_\_\_ )

**VERIZON FLORIDA INC.'S PETITION PROTESTING PROPOSED AGENCY ACTION  
ORDER APPROVING ASSIGNMENT OF ASSETS AND ALTERNATIVE LOCAL  
EXCHANGE TELECOMMUNICATIONS AND INTEREXCHANGE  
TELECOMMUNICATIONS CERTIFICATES**

Pursuant to the Notice of Proposed Agency Action issued in this docket on March 12, 2002 ("PAA Notice") and Florida Administrative Code section 28-106.201, Verizon Florida Inc. ("Verizon") protests the PAA Notice. That Notice proposed approving the Emergency Joint Application for Approval of the Assignment of Assets and AAV/ALEC Certificate No. 4025 and IXC Certificate No. 2699 from Winstar Wireless, Inc. ("Old Winstar") to Winstar Communications, LLC ("New Winstar") (together, "Applicants"), filed on January 16, 2002. Verizon learned of the PAA Notice from the Commission's website on March 13, 2002.

The Applicants seek to transfer Old Winstar's certificates, customers, and assets to New Winstar so that New Winstar can continue providing service to Old Winstar's customers. They assert that expedited approval of the Application is essential to avoid disruption of service to existing customers of Old Winstar. (See Emergency Joint Application at 2, 6, 7, 8.) This Protest is necessary because there are disputed material facts with regard to New Winstar's ability to continue to provide uninterrupted service to Old Winstar's customers and its financial capability to meet its ownership obligations.

DOCUMENT NUMBER-DATE

03726 APR-28

FPSC-COMMISSION CLERK

Verizon provided Old Winstar services and facilities under the parties' interconnection agreement (Verizon/Winstar Agreement), approved by the Commission on August 24, 1998, and under Verizon's tariffs. As of April 18, 2001 (when Winstar filed its bankruptcy petition), Old Winstar owed Verizon approximately \$515,384.00 for services rendered under the Verizon/Winstar Agreement and Verizon's tariffs. Old Winstar has not assigned the Verizon/Winstar Agreement to New Winstar, nor have any other arrangements involving Verizon been assumed by, or assigned to, New Winstar. To prevent disruptions of service to existing Old Winstar customers, this assumption and assignment must occur, including New Winstar's assumption of Old Winstar's debts to Verizon.<sup>1</sup>

If 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.

It is precisely this potential result that prompted the Massachusetts Department of Telecommunications and Energy ("MDTE") to oppose the debtors' motion to reject certain special access tariffs with Verizon in the bankruptcy proceeding involving Net2000.<sup>2</sup> As the MDTE noted, if the special access tariff arrangements are rejected, the circuits will be disconnected:

Once a circuit is disconnected, it goes back into Verizon's inventory, and is assigned on a first-come, first-served basis to the next customer in line

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<sup>1</sup> Pursuant to §365 of the U.S. Bankruptcy Code, before any contract assumption and assignment can occur, (1) Old Winstar's default must be cured and (2) Verizon must receive adequate assurance of future performance under its contracts. Because neither has occurred, no transfer can occur and New Winstar's customers will not receive uninterrupted service. Verizon's tariffs also require the assignee to assume the assignor's outstanding indebtedness before service will be transferred (Facilities For Intrastate Access Tariff, Sec. 2.1.1(A)(1).)

<sup>2</sup> *In re: Net2000, Inc., et al.*, (Bankr. D. Del. 2001) (Case No. 01-11324 (MFW).)

for facilities. If a circuit serving a former Net2000 customer is disconnected, that customer will have to go to the end of the line for new facilities before having its telecommunications service restored. The business customers currently served via those circuits will lose voice and data service for an indeterminate period of time, and may suffer an incalculable loss of both revenue and reputation, a loss for which they may never be made whole. (Opposition of MDTE at 2.)

What the Applicants seek to do is to enjoy the full benefit of Old Winstar's contracts and service arrangements with Verizon while completely avoiding the liability that Old Winstar has accrued thereunder. The only way to transfer the service arrangements and ensure that service continues without interruption is for Old Winstar to assign its contracts and service arrangements to New Winstar. In order for those contracts and arrangements to be assumed and assigned, they must be brought current and fully paid and Verizon must receive adequate assurances that future payments will be made. The Joint Applicants have not disclosed to the Commission that their failure to take these actions will cause the very service disruptions they purportedly seek to prevent.

Verizon and its customers have a substantial interest in this proceeding. To the extent Verizon cannot collect the money it is owed by Old Winstar, it will need to recover that bad debt in its telecommunications service rates, to the detriment of subscribers to those services.

Under Commission Rules 25-24.730 and 25-24.473, New Winstar must demonstrate that it has the financial capability to maintain service and to meet its "ownership obligations." (See form for Application for Authority to Provide Interexchange Telecommunications Service Between Points Within the State of Florida, at 12.) The Applicants have failed to make the requisite showing of financial ability to

take on Old Winstar's obligations and have misled the Commission with regard to their ability to transfer Old Winstar's customers to New Winstar without disruption.

Verizon understands that the Applicants have informed the Commission that they intend to discontinue certain telecommunications services in Florida. (Notification of Winstar Wireless, Inc. and Winstar Comm., LLC of Discontinuance of Certain Services in the State of Florida, Docket No. 020054-TP, March 18, 2002 ("Discontinuation Notice").) However, they have not sought to cancel the certificates to be transferred under the PAA Notice and New Winstar will still provide local resale services and long distance services. (*Id.* at 4.) So the notification of discontinuation of some services does not affect the rationale underlying this Protest. The fact remains that a certificate transfer is contemplated from a company that left the market owing substantial uncured debt to Verizon, with no assurance that the transferee will not do the same. In fact, in light of the Applicants' stated possibility that additional services may be discontinued (Discontinuation Notice at fn 5), it is critically important for the Commission to assure that the new certificated entity can and will fulfill its ownership obligations, including the payment of outstanding debts and charges for services rendered going forward.

For all the reasons discussed in this Protest, Verizon asks the Commission to modify its PAA Notice to condition the transfer of Old Winstar's operation to New Winstar on the following actions:

1. New Winstar must assume Old Winstar's indebtedness to Verizon.
2. New Winstar shall deposit into an escrow account an amount equal to the last six months billings from Verizon to Old Winstar, from which Verizon

shall be able to draw should New Winstar fail to make any payment to Verizon as it becomes due; and


3. Every contract between Verizon and New Winstar shall include a provision that Verizon has the unilateral right to terminate the contract upon thirty days' written notice if New Winstar fails to make any payment as it becomes due.

These second and third remedies shall be cumulative and Verizon's ability to draw upon the bond for payment shall not be considered a cure of any failure to pay on the part of New Winstar. In other words, if New Winstar fails to make any payment when it becomes due, Verizon shall be able to draw upon the bond for payment and terminate the contract.

Verizon does not believe any hearing is necessary for the Commission to impose these conditions. However, if the Commission wishes to examine the relevant facts in greater detail, then Verizon requests initiation of a formal evidentiary proceeding.

Respectfully submitted on April 2, 2002


By:

  
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Attorney for Verizon Florida Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Petition Protesting Proposed Agency Action Order Approving Assignment of Assets and Alternative Local Exchange Telecommunications and Interexchange Telecommunications Certificates in Docket No. 020054-TP were sent via U.S. mail on April 2, 2002 to the parties on the attached list.

 for  
\_\_\_\_\_  
Kimberly Caswell

Staff Counsel  
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