Kimberly Caswell
Vice President and General Counsel, Southeast
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April 17, 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

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 for filing an original and 15 copies of Verizon Florida Inc.'s Opposition to Winstar's Motion to Dismiss Verizon's Petition Protesting Proposed Agency Action in the above matter. Service has been 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/dm

Kimberly Caswell

KC:tas
Enclosures

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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| 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<br>Filed: April 17, 2002 |

**VERIZON FLORIDA INC.'S OPPOSITION TO WINSTAR'S MOTION TO DISMISS VERIZON'S PETITION PROTESTING PROPOSED AGENCY ACTION**

On April 2, 2002, Verizon Florida Inc. ("Verizon") filed a petition Protesting the Commission's Proposed Agency Action 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. On April 5, 2002, Applicants filed a Motion to Dismiss Verizon's Petition. Verizon asks the Commission to deny that Motion to Dismiss.

In its Petition protesting the proposed agency action (PAA), Verizon explained that 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. While Applicants allege that there are no such disputed issues of fact, they avoid discussing the facts that relate to Verizon's protest.[1] That is, New Winstar seeks "as is" transfers of circuits Old Winstar used to provide service, but New Winstar has not agreed to pay Old Winstar's outstanding debts to Verizon. New

[1] While the Applicants ignore the relevant facts, they discuss others that do not relate to Verizon's Protest or the Commission's obligation to review the transfer at issue. For example, the Applicants contend that Verizon "did not object to the Sale Order in the Bankruptcy Court." (Motion to Dismiss at 5.) Verizon did, in fact, object to numerous aspects of the Sale Order. Those objections were overruled, but Section 2 of the Bankruptcy Sale Order contains language that reserves rights with respect to cure disputes.

Winstar thus seeks to enjoy the benefits of Old Winstar's contracts and service arrangements with Verizon while completely avoiding the associated liabilities.

Contrary to the Applicants' arguments, Verizon is not seeking to "have the Commission decide questions of bankruptcy law" or to avoid its obligations under the Telecommunications Act or Florida law. (Motion to Dismiss at 6.) Rather, Verizon is trying to assure compliance with its tariffs and the law. To obtain the seamless transition of service the Applicants claim to seek, Old Winstar must assign its service arrangements with Verizon to New Winstar. In order to do so, New Winstar must assume Old Winstar's indebtedness to Verizon. This requirement is clearly spelled out in Verizon's Commission-approved tariffs. Verizon's access tariff, section 2.1.2(A), states that a customer may assign or transfer the use of access facilities only "provided the assignee or transferee assumes all outstanding indebtedness for such FIA" (facilities for intrastate access). Although Verizon is not asking the Commission to interpret or apply the U.S. Bankruptcy Code, that law also requires Old Winstar's default to be cured before any contract assumption and assignment can occur. (*See* Verizon's Petition at n. 1, *citing* U.S. Bankruptcy Code section 365.)

The Applicants have not responded to these points. They have cited nothing in Verizon's interconnection agreement with New Winstar, state or federal law, or the Bankruptcy Court's Sale Order that requires Verizon to assign to New Winstar the circuits and services Old Winstar used to serve customers, but without New Winstar assuming the associated indebtedness. In fact, the Bankruptcy Sale Order itself contemplates that if Old Winstar's contracts with telecommunications carriers, such as Verizon, are rejected and not assigned to New Winstar, then New Winstar has only the right to establish "replacement circuits." (Bankruptcy Sale Order at para. 23(f), attached as Ex. A to Applicants' Motion.) It has no right to demand use of Old Winstar's existing circuits in place, as it is in this case. Ordering new facilities to serve existing customers and assigning those customers to a new carrier account are much different in terms of New Winstar's obligations under Verizon's tariffs, its interconnection agreement, and applicable law. If the Applicants want an assignment, then they need to pay the outstanding debt. If they are seeking to place new orders for the existing customers, then they need to submit those orders, pay the associated nonrecurring charges and receive new service pursuant to normal procedures.

At one point in its Motion to Dismiss, the Applicants state that "New Winstar has already entered into a new agreement with Verizon [and] New Winstar has already submitted orders for circuits to serve the customers that it is acquiring from Old Winstar." (Motion to Dismiss at 10 [emphasis omitted].) This statement implies that New Winstar is not, in fact, seeking assignment of existing access circuits currently in use by existing customers, but that it has placed orders under Verizon's processes. This claim directly conflicts with information Verizon has received from Winstar, including letters and lists of circuits Winstar has designated as "keepers"—that is, those which it seeks to transition *without* placing new orders. (Attached are two examples of letters from Winstar seeking "transition" of circuits without any new order activity. Verizon can provide lists of "keeper" circuits to Staff upon request.)

Verizon believes Winstar may be misleading the Commission by failing to distinguish between new circuits ordered under the Verizon/New Winstar interconnection agreement with the existing circuits used to serve Old Winstar's customers. Most of the debt and the Old Winstar circuits that New Winstar seeks to transfer have nothing to do with the new interconnection agreement. Verizon does not dispute New Winstar's ability to order new circuits under that agreement, but the agreement does not give New Winstar the ability to obtain assignment of Old Winstar's access circuits, let alone an assignment without assumption of the associated debt.

The point is that neither Winstar's Motion to Dismiss nor the transfer application clearly and accurately disclose the Applicants' plans for transitioning Old Winstar's customers to New Winstar—that is, whether they seek an assignment of existing customer circuits or whether they will place new orders to serve these customers. This factual inquiry is directly relevant to the Commission's review of the transfer application--in particular, to New Winstar's ability to provide uninterrupted service to Old Winstar's customers, and to New Winstar's ability to meet its ownership obligations (including the obligation to cure Old Winstar's indebtedness to Verizon).

The fact that Old Winstar is in bankruptcy does not remove this Commission's obligation to substantively review the transfer application. In fact, the Commission should, if anything, give it particularly close scrutiny. As Verizon pointed out in its Petition, when Old Winstar filed its bankruptcy petition a year ago, Old Winstar owed Verizon about $515,384.00 for services rendered under Verizon tariffs and the Verizon/Winstar interconnection agreement. This debt increased during the bankruptcy proceedings because Old Winstar subsequently violated its stipulated court orders for adequate assurances of payment to Verizon and many other telecommunications carriers across the country.[2] 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 Verizon's subscribers. The Commission is obliged to consider the effect of the transfer on these subscribers, as well as potential effects on Winstar subscribers.

In the latter regard, the Applicants, not Verizon, control whether the transition of Old Winstar's customers and serving arrangements to New Winstar will be "seamless" or not. If New Winstar wishes to assign customers without any service disruption, then it must also assume the debt Old Winstar owes Verizon on the facilities and services in use by such customers. If it does not wish to effect such an assignment, then Verizon has the right to return Old Winstar's facilities to inventory for reassignment.

Indeed, the Applicants' purported concern for a quick and easy transfer of customers is at odds with the Applicants' own behavior. Under the Bankruptcy Sale Order, New Winstar had 120 days (from December 19 through April 17) to get all its regulatory approvals and direct the bankruptcy trustee to reject or assume and assign all the operating contracts it needs. Yet the Applicants did not even file their transfer application until January 16, 2002, almost a month after the Bankruptcy Sale Order, and they still have not effected the requisite assumptions and assignments.

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[2] Well prior to the Bankruptcy Sale Order, dated December 19, 2001, under which the bankruptcy court permitted an affiliate of New Winstar to purchase Old Winstar's operating assets, Old Winstar defaulted on its court-ordered payment obligations to its underlying carriers. In total disregard of its carrier obligations to its customers, Old Winstar failed to give any notice of imminent service discontinuance to any of its customers, despite its knowledge that its stipulated court orders permitted its underlying carriers to disconnect service to Old Winstar upon its default. Instead, Old Winstar continued to hold itself out for sale as a going concern and operating carrier until, on the eve of court-ordered liquidation, New Winstar's affiliate made an asset purchase bid that was approved by the bankruptcy court.

Verizon has demonstrated in past CLEC bankruptcy situations that it will work cooperatively with the Commission to mitigate unexpected service disruptions to CLEC end users when they exit the market, and it will do so here, as well. However, Verizon cannot be expected to waive its legal rights and underwrite a new CLEC that purchased a failed CLEC's customer operations—especially when the new CLEC controls the means (*i.e.*, assignment and assumption) to safeguard against any service disruptions to customers.

For all the reasons stated here, the Commission should deny the Applicants' Motion and continue with the proceeding initiated by Verizon's Petition protesting the PAA.

Respectfully submitted on April 17, 2002.

By: Kimberly Caswell (dm

Kimberly Caswell
P. O. Box 110, FLTC0007
Tampa, FL 33601
(813) 483-2617

Attorney for Verizon Florida Inc.

winstar

February 26, 2002

**VIA OVERNIGHT DELIVERY**

Antonio Yanez
Verizon – Vice President
1095 Avenue of the Americas
14th Floor, Room 1402
New York, NY 10036

Marian Howell
Verizon – Account Manager
2980 Fairview Park Drive
10th Floor
Falls Church, VA 22042

Dear Mr. Yanez and Ms. Howell:

On behalf of Winstar Communications, LLC, Winstar of Delaware, LLC, Winstar of Hawaii, LLC, Winstar of New Jersey, LLC, Winstar of New York, LLC, Winstar of Pennsylvania, LLC, Winstar of Virginia, LLC, and Winstar of West Virginia, LLC (collectively, "Winstar"), this letter is to advise you that Winstar desires Verizon to transition to Winstar the circuits identified in the attached initial list. The customers whose service is associated with these circuits are in the process of being acquired by Winstar from Winstar Wireless, Inc. ("WWI") pursuant to an Order of the Bankruptcy Court, and Winstar will serve these customers as their preferred carrier of choice. In accordance with the Communications Act of 1934, as amended, and the Bankruptcy Court Order, Winstar requires the use of these circuits to serve its customers and, accordingly, submits this notice to obtain such circuits from Verizon.

Although Winstar is in the process of finalizing an interconnection agreement(s) with Verizon and obtaining the necessary regulatory approvals to transfer the customers without disrupting their service, and to operate in all of the Verizon Service Areas as a competitive local exchange carrier, Winstar is providing this initial list of circuits and notice of its intention to obtain these circuits to Verizon at this time in order to assure that the transition will be handled expeditiously. Winstar will advise Verizon as soon as the necessary agreements and approvals are obtained. Also, Winstar will advise Verizon of any changes or additions in the attached circuit list.

Winstar believes the provisioning of these circuits will not require any physical changes in the network configuration being used to serve these customers today, and requires only that Verizon change the billing information associated with the listed circuits (a billing change only or "Record Order") in order to undertake the transition of these circuits to

Winstar. Winstar is providing this advance notice and information to assist Verizon in developing a streamlined process to transition the large number of affected circuits on a bulk basis in a smooth, orderly and timely manner, so that all service disrupting effects and delays, and unnecessary costs, can be avoided. Winstar believes that it has provided the information necessary to complete the transition, but if you believe it would be helpful, we would be pleased to meet with you in the near term Verizon to discuss how the details and timing of the transition may be coordinated to ensure that service is continued in an uninterrupted and transparent manner to customers.

Thank you in advance for your assistance with this matter. Feel free to contact me at (202) 367-7657 if you require anything further to facilitate the transition.

Very truly yours,

Stephen V. Murray
Senior Director

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winstar

1850 M Street, NW
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(202) 969 9800

March 28, 2002

**VIA OVERNIGHT DELIVERY**

Antonio Yanez
Verizon – Vice President
1095 Avenue of the Americas
14th Floor, Room 1402
New York, NY 10036

Marian Howell
Verizon – Account Manager
2980 Fairview Park Drive
10th Floor
Falls Church, VA 22042

Dear Mr. Yanez and Ms. Howell:

On behalf of Winstar Communications, LLC, Winstar of Delaware, LLC, Winstar of Hawaii, LLC, Winstar of New Jersey, LLC, Winstar of New York, LLC, Winstar of Pennsylvania, LLC, Winstar of Virginia, LLC, and Winstar of West Virginia, LLC (collectively, "Winstar"), this letter is to advise you that Winstar desires Verizon to transition to Winstar the circuits identified in the attached list, which supplements the list provided to you on February 26, 2002.

Winstar has executed interconnection agreements with Verizon and is in the process of obtaining the necessary regulatory approvals to transfer the customers without disrupting their service, and to operate in all of the Verizon Service Areas as a competitive local exchange carrier. Winstar is providing this list of circuits and notice of its intention to obtain these circuits to Verizon at this time in order to assure that the transition will be handled expeditiously. Winstar will advise Verizon of any changes or additions to the attached circuit list.

winstar

Winstar believes the provisioning of these circuits will not require any physical changes in the network configuration being used to serve these customers today, and requires only that Verizon change the billing information associated with the listed circuits (a billing change only or "Record Order") in order to undertake the transition of these circuits to Winstar. Winstar is providing this advance notice and information to assist Verizon in developing a streamlined process to transition the large number of affected circuits on a bulk basis in a smooth, orderly and timely manner, so that all service disrupting effects and delays, and unnecessary costs, can be avoided. Winstar believes that it has provided the information necessary to complete the transition, but if you believe it would be helpful, we would be pleased to meet with you to discuss how the details and timing of the transition may be coordinated to ensure that service is continued in an uninterrupted and transparent manner to customers.

Thank you in advance for your assistance with this matter. Feel free to contact me at (202) 367-7657 if you require anything further to facilitate the transition.

Very truly yours,

Stephen V. Murray
Senior Director

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of Verizon Florida Inc.'s Opposition to Winstar's Motion to Dismiss Verizon's Petition Protesting Proposed Agency Action in Docket No. 020054-TP were sent via U.S. mail on April 17, 2002 to the parties on the attached list.

Kimberly Caswell/dm

Kimberly Caswell

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