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MEMORANDUM

TO: Docket Control

FROM: *for* Ernest G. Johnson
Director
Utilities Division

Appropriate

THRU: Wilfred Shand, Jr.
Manager, Telecommunications and Energy
Utilities Division

Matt Rowell
Chief, Telecommunications and Energy
Utilities Division

Arizona Corporation Commission

DOCKETED

AUG 30 2004

DOCKETED BY	<i>CAR</i>
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DATE: August 30, 2004

RE: IN THE MATTER OF THE APPLICATION OF WINSTAR COMMUNICATIONS OF ARIZONA, LLC FOR AUTHORITY TO DISCONTINUE THE PROVISION OF LOCAL AND INTEREXCHANGE TELECOMMUNICATIONS SERVICES TO COMMERCIAL CUSTOMERS IN ARIZONA (DOCKET NO. T-03023A-04-0317)

Attached is the Staff Report on the above Application by Winstar Communications of Arizona, LLC ("Winstar") to discontinue the provision of local and interexchange telecommunications services to commercial customers in Arizona. Staff recommends approval of the discontinuance of services requested by Winstar.

EGJ:JFB:cal

Originator: John F. Bostwick

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DOCKET NO. T-03023A-04-0317

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STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

WINSTAR COMMUNICATIONS OF ARIZONA, LLC
DOCKET NO. T-03023A-04-0317

IN THE MATTER OF THE APPLICATION OF WINSTAR COMMUNICATIONS OF
ARIZONA, LLC FOR AUTHORITY TO DISCONTINUE THE PROVISION OF
LOCAL AND INTEREXCHANGE TELECOMMUNICATIONS SERVICES TO
COMMERCIAL CUSTOMERS IN ARIZONA

AUGUST 30, 2004

STAFF ACKNOWLEDGMENT

The Staff Report for the application described in Docket No. T-03023A-04-0317 was the responsibility of the Staff member listed below. John F. Bostwick was responsible for the review and analysis of the Winstar Communications of Arizona, LLC's Application to discontinue the provision of local and interexchange telecommunications services to commercial customers in Arizona.



John F. Bostwick
Administrative Services Officer II

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Introduction

Winstar Communications of Arizona, LLC (“Winstar”),¹ under R14-2-1107 of the Arizona Administrative Code (“AAC”), filed its Application to discontinue certain services in selected areas in Arizona. Specifically, Winstar is seeking Arizona Corporation Commission approval to discontinue the provision of certain local and interexchange telecommunications services to customers in a number of Arizona locations.

Background

In its Application of April 27, 2004, Winstar provided the following information:

- As part of Winstar’s plan to refocus its business plan in order to maintain long term profitability, Winstar has determined to discontinue the provision of certain services in a number of locations nationwide, including locations in Arizona. This includes the discontinuance of certain commercial facilities-based services that are currently provided through the use of a Winstar switch located in the state of Arizona. Winstar will also discontinue certain customers who receive commercial service through the resale of services provided by other facilities-based providers in Arizona. Winstar has provided the reasons to discontinue services, in a letter sent to the customers, as required in AAC R14-2-1107A.1.;
- According to AAC R14-2-1107A.3., the Application to discontinue service requires a plan to refund any deposits. Winstar does not require deposits of its subscribers and holds no deposits for the customers whose service is being discontinued;
- Winstar was granted a Certificate of Convenience & Necessity (“CC&N”) to provide local and interexchange telecommunications throughout Arizona pursuant to the Commission’s Decision No. 64740 issued in Docket Nos. T-03023A-02-0052 and T-03670A-02-0052 dated April 17, 2002;
- Winstar seeks authority to discontinue the provision of certain services provided to non-federal governmental customers primarily in the Phoenix, Mesa, Scottsdale and Tucson metropolitan areas. This discontinuance will affect approximately 152 customers in Arizona;
- Winstar seeks authority to discontinue the provision of local and interexchange services to commercial customers in Arizona. Winstar is also discontinuing interstate and international long distance, toll free and Internet services to

¹ In its Application Winstar Communications of Arizona, LLC stated that “Winstar” also includes its parent Winstar Communications, LLC and its parent’s subsidiaries that provide services in other states.

commercial customers in Arizona. This discontinuance application does not affect Winstar's federal and state governmental customers, Winstar's fixed wireless services and offerings supporting mobile carrier infrastructures and other backhaul systems, or Winstar's spectrum lease offerings in Arizona;

- On May 14, 2004, a supplement to the Application was filed by Winstar. It disclosed the discontinuance of services to 2 additional customers. One customer receives local, long distance, Internet and private line services. The other customer receives internet and ATM services. The discontinuance of service should not affect some customers that receive business Internet services only;
- In the supplemental filing to the Application, Winstar also indicated that the Docket number used for this Application to record the identifying number for Winstar was incorrect and needed to be changed;
- Winstar further requests that the Commission correct the Docket number for this Application to reflect the identifying number for Winstar Communications of Arizona, LLC. The Applicant believes the correct Docket number is T-03670;
- Written notice to all affected customers substantially in the form of the "Notice of Communication Services Discontinuance" and "Frequently Asked Questions" material attached as Exhibit A and B, was mailed to Winstar customers on April 7, 2004. The customer notice letter was prepared in accordance with the requirements of AAC R14-2-1107 and Section 63.71(a) of the Federal Communication Commission's Rules; and
- In the customer notice material, Winstar advised affected customers that Z-Tel Communications, Inc. ("Z-Tel"), a nationwide telecommunications provider, will work with customers to convert their Winstar service to a comparable Z-Tel service. Winstar provided customers with Z-Tel's contact information. Winstar indicated that it will also work with alternative carriers to effectuate a seamless transition of the affected customer to the alternative carrier's network. Winstar will release to its customer all pertinent end-user circuit information required to transfer service to another carrier.

In the Application, Winstar stated that alternative utilities providing similar telecommunications services include, but are not limited to, Z-Tel, Qwest, AT&T, MCI WorldCom, Cox, XO Communications, McLeodUSA and Level 3. A list of alternative service providers is not shown in the Application as Exhibit A in the "Notice of Communication Services Discontinuance" and Exhibit B in the "Frequently Asked Questions". However, Winstar stated in the "Frequently Asked Questions" that "A list of carriers servicing your area can usually be found in the front of your local telephone book." Staff verified that a list of carriers serving the area appears in the front of the

telephone book. As a result, Staff believes that Winstar has complied with AAC R14-2-1107A.4.

Staff's Analysis

Based on the data requests sent to the Applicant, Staff obtained the following additional information:

- All affected customers located in Arizona, regardless of whether they receive Arizona jurisdictional services, received a customer notice letter "Notice of Communication Services Discontinuance" and a form of "Frequently Asked Questions" as provided in Exhibits A and B of the Application that explained that their services, including Internet services, are being discontinued. The customer notice letters and Frequently Asked Questions forms were mailed on April 7, 2004. The anticipated date for the discontinuance of service was June 15, 2004. The date of the second customer notice letter was sent to the affected customers, described in the Supplement to Application, was April 30, 2004. The anticipated date for the discontinuance of service was June 30, 2004. Staff believes all affected customers have been notified as required by AAC R14-2-1107A.2.;
- Winstar reported that it has not collected any advances and/or prepayments from the affected customers. Consequently, a plan to refund deposits, as required in AAC R14-2-1107A.3, does not apply to Winstar in this Application;
- Winstar is currently providing intrastate resold long distance telecommunications services in Arizona. Also, Winstar is currently providing facilities-based long distance telecommunications services in Arizona;
- Winstar is discontinuing service to 154 (initially reported 152 customers plus 2 more customers in the supplement report) non-federal governmental customers in Arizona. Winstar is not discontinuing services to wholesale customers;
- Winstar currently has one technical operations employee in Arizona. This employee will remain in Arizona to oversee daily operations after affected customers have been discontinued; and
- Staff questioned the Applicant if any other alternative carriers offered to work with Winstar's customers to transition their services. Staff also inquired how Winstar determined that it would use Z-Tel to refer their customers to convert their Winstar service to a comparable Z-Tel service. Staff asked if Winstar received any payment, special treatment, favors or benefits from Z-Tel for indicating that Z-Tel "...would welcome the opportunity to work with Winstar customers to transfer their service to Z-Tel." Winstar replied that it is not aware of any other alternative carriers that offered to work with Winstar's customers on

a nationwide basis to convert their service in a timely manner. Also, Winstar disclosed that it has a confidential agreement with Z-Tel that contains competitively sensitive information. Winstar stated that it will provide details of that agreement upon execution of a protective agreement.

Legal notice of the discontinuance was published in the Arizona Republic on May 17, 2004 or 20 days after the Application to discontinue service was filed. Winstar filed the affidavit of publication with the Commission as required by AAC R14-2-1107B.

On June 15, 2004, Staff received a letter from Mr. William D. Sheldon, Associate General Counsel, representing SCF of Arizona. The letter stated that Winstar failed to comply with payments on a lease and currently owes his client more than \$11,000 in arrears. According to Winstar's legal representative, SCF of Arizona is not a customer of Winstar. Staff believes that the lease payment issue falls outside of the scope of the Arizona Administrative Code rules. As a result, Winstar has provided proper notice and no known objections have been filed by any Winstar customers. Winstar has met the requirements established in AAC R14-2-1107C.

Staff verified that Winstar told its customers in the service locations affected by the discontinuance that they will not be charged any early termination fees and will not be invoiced for early termination fees related to breaking of a contract term. This information was stated in the "Frequently Asked Questions" form attached as Exhibit B.

Pursuant to the information provided by the Company, approximately 12 out of 154 customers in the service locations affected by the discontinuance have not selected a new service provider.

Staff contacted Docket Control Center to determine the correct number for Winstar Communications of Arizona, LLC. Docket Control Center will review this matter and make necessary changes as required. Docket Control Center should inform the Applicant of any changes to the Docket number and correct Docket number identifying the Applicant.

Utilities Division Consumer Services Staff has reported that from January 1, 2001 through July 17, 2004, there was one complaint by a Winstar customer in Arizona during 2001. The customer had a problem with the 800 service not working. During 2002, three complaints and one inquiry were filed regarding billing issues by Winstar customers in Arizona. In the same year, one inquiry relating to cellular telephone service was filed by a Winstar customer. No complaints, no inquiries and no opinions were filed against Winstar in 2003. As of July 17, 2004, two inquiries have been filed this year. One dealt with Winstar's cellular telephone service. The other inquiry pertained to the lease payment issue to SCF of Arizona.

Recommendations

Based upon the information received from Winstar, it is Staff's view that the proposed transactions will serve the public interest.

According to Winstar's Application, disconnection of service to certain customers is necessary and appropriate and will not adversely affect the public convenience and necessity. The public will not be unduly harmed by the discontinuance of the services described above because customers have been given notice that affords them an opportunity to transfer to a new carrier without a termination fee. The affected customer whose service is being discontinued is able to obtain service from any provider of their choice. Winstar has undertaken a customer notification initiative that is aimed at providing affected customers with sufficient notice and opportunity to select another provider. Further, Winstar is making a concerted effort to ensure an orderly and seamless transition of service for all customers affected by the discontinuance of service.

Upon approval of its Application, Winstar will continue to provide facilities-based interexchange and local exchange and resold interexchange telecommunications services to federal government and state government customers. In addition, wireless services will continue to be provided to federal government and state government customers as well as the general public.

Staff notes that the Procedural Order in this matter dated July 29, 2004, mentioned modification of Winstar's CC&N. However, Winstar has not requested a modification of its CC&N. Because Winstar intends to continue to serve some customers, it must maintain a CC&N. Accordingly, Staff does not believe that a modification of Winstar's CC&N is needed at this time.

Staff believes the discontinuance of certain services to commercial customers in Arizona by Winstar is in the interest of the public and should be approved by the Commission.

Staff recommends that the Commission grant Winstar's request to discontinue the provision of local and interexchange services, interstate and international long distance, toll free and Internet services to commercial customers in Arizona.

Staff further recommends that there should be no hearing concerning this Application.

EXHIBIT A

NOTICE OF COMMUNICATION SERVICES DISCONTINUANCE



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

NOTICE OF COMMUNICATION SERVICES DISCONTINUANCE
DO NOT DISREGARD THIS NOTICE

April 7, 2004

[CUSTOMER]
[ADDRESS]
PHOENIX, AZ 85002

RE: Account #

Dear Winstar Customer:

We regret to inform you that Winstar plans to reconfigure and redesign the services it offers in your geographic area. As a result, we have determined that we can no longer provide your telecommunications services. We have also informed the Federal Communications Commission of this development. **Accordingly, Winstar intends to discontinue all LOCAL, DOMESTIC AND INTERNATIONAL LONG DISTANCE, TOLL FREE, PRIVATE LINE, and INTERNET SERVICES that you receive in your current service location. Subject to regulatory approval, the anticipated date for the discontinuance of your service is Tuesday, June 15, 2004.**

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 assist in the transition of your service. Z Tel Communications, Inc., a nationwide telecommunications provider, has advised us that it would welcome the opportunity to work with our customers to convert their Winstar service to a comparable Z-Tel service. You may contact Z-Tel directly to discuss the services they offer at 1-800-371-3818.

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 Communication, LLC. 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.

Winstar appreciates the opportunity we have had to serve you. We are committed to making your service transition as smooth as possible. Please review the attached list of Frequently Asked Questions. If you have any further questions regarding the discontinuance of our services, please contact us at 1-800-778-3757.

Sincerely yours,
Winstar Customer Service

Attachment: Frequently Asked Questions

Exhibit A

EXHIBIT B

FREQUENTLY ASKED QUESTIONS

FREQUENTLY ASKED QUESTIONS – April 7, 2004

I received a Notice of Discontinuance of Service. What should I do now?

Please do not delay in arranging for a new service provider, as some carriers may require several weeks to install new services. You should contact other carriers that serve your area to discuss their rates and terms and make immediate arrangements to migrate your service to a new carrier. A list of carriers serving your area can usually be found in the front of your local telephone book. *As noted in the attached letter, Z-Tel Communications, Inc. has advised us that it would welcome an opportunity to work with our customers to convert their Winstar service to any comparable Z-Tel service. You may contact Z-Tel to discuss the services they offer at 1-800-371-3818.* To help avoid unplanned service disruption, please check carefully that all service types you currently have with Winstar (local phone, long distance, calling card, toll free, and/or Internet services) are moved to your new carrier. Once you have chosen your new provider, Winstar will make every effort to assist in a smooth service transition.

Who is Z-Tel?

Z-Tel is a nationwide wire line and broadband telecommunications company serving consumers and businesses. Unlike other providers, Z-Tel offers its customers enhanced calling features, such as voice-activated dialing and Web-accessible voicemail, which make communications smarter and more efficient. In addition to serving its own customers, Z-Tel is the backbone provider for Sprint's local service and formerly for MCI's The Neighborhood. Z-Tel has been serving customers since 1999 and is traded on the Nasdaq exchange under the symbol "ZTEL". Over half a million customers across the country rely on Z-Tel-powered services every day.

Can I still contact Winstar if I have issues related to my account?

Yes. Winstar's National Customer Satisfaction Center will be available to assist with your transition and any related questions you have. If you have a customer request or inquiry, you may either call us at 800-778-3757 or you may contact us at assistance@winstar.com. We are committed to providing personal assistance with every inquiry.

I have an installation scheduled with Winstar. What is the status?

Winstar will proceed with currently scheduled installations of local phone service, long distance, or high speed Internet services for your affected service location; however, we anticipate disconnecting these services, subject to regulatory approvals, on Tuesday, June 15, 2004. Please contact Winstar immediately at 800-778-3757 if you choose to cancel your pending order.

My business has local phone service from Winstar. What will happen to my phone number?

Your phone number may be transferred to your new local phone company upon completion of the migration process. Make sure that your new carrier is aware of your desire to keep your existing phone number(s).

What will happen to my bill?

You will need to pay all charges applicable to your account through the date your service is switched and calls are carried by your new provider. A final invoice will be sent to you showing applicable charges through that date, which will be due and payable per Winstar's payment policy. You will not be charged any early termination fees.

I have a long-term contract with Winstar. Will I be charged for leaving?

No. Winstar customers in the service locations affected by this discontinuance will not be invoiced for early termination fees related to the breaking of a contract term.

I am having technical trouble with my service. Who do I speak to?

Winstar will continue to respond to reports of technical problems. If you are having technical trouble, call us at (888) WINSTAR (888-946-7827).

I have a question that was not answered in these FAQs. How do I contact Winstar?

If you have a question that was not addressed in these FAQs you may either send us an email to assistance@winstar.com or you may contact us at 800-778-3757.

Where does Winstar still operate?

Winstar intends to maintain its commercial switched network in the New York and Washington, DC markets. It also maintains numerous fixed wireless, mobile network infrastructure, and government systems nationwide.