

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

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WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

2002 MAR 20 P 4: 25

AZ CORP COMMISSION
DOCUMENT CONTROL

T-03670A-02-0218

IN THE MATTER OF THE APPLICATION OF
WINSTAR WIRELESS, INC. AND WINSTAR
COMMUNICATIONS OF ARIZONA, L.L.C.
FOR AUTHORITY TO DISCONTINUE
CERTAIN TELECOMMUNICATIONS
SERVICES IN THE STATE OF ARIZONA

Docket No.

APPLICATION

WinStar Wireless, Inc. ("Old WinStar"), and WinStar Communications of Arizona, LLC ("New WinStar" and, when used collectively, "WinStar" or "Applicants"), pursuant to Section R14-2-1107 of the Arizona Administrative Code, respectfully request Commission authority to discontinue certain telecommunications services in the State of Arizona.¹ 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). As described below, WinStar will continue to provide other telecommunications services to customers in Arizona and does not desire to cancel its Certificate of Convenience and Necessity. Applicants also request expedited treatment so that these services can be discontinued on or before April 29, 2002. In support of these requests, Applicants provide the following information:

¹ The customers whose services will be discontinued pursuant to this Application are all currently still being served by Old WinStar pending approval of the transfer and transition of their underlying service to New WinStar's interconnection and other agreements. However, as discussed below, Applicants are still in the process of completing the necessary approvals, agreements, and transition of customers from Old WinStar. Since the discontinuance may actually occur after that process is completed, the Applicants are filing this Application jointly.

1 **I. BACKGROUND**

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

8 On December 19, 2001, the Bankruptcy Court approved the sale of the core
9 domestic assets of WinStar Communications, Inc., the ultimate parent of WinStar, to
10 WinStar Holdings, LLC. As the sale contemplated the transfer of assets, including
11 customers, of Old WinStar to New WinStar, a subsidiary of WinStar Holdings, LLC, and
12 ultimately IDT Corporation, the Applicants have sought the necessary federal and state
13 regulatory authority, including seeking approval from this Commission for the transfer of
14 assets.² During the 120-day transition period established by the Bankruptcy Court for
15 purposes of obtaining regulatory approvals and transitioning services, the Applicants have
16 continued the review of the operations of Old WinStar to make final determinations as to
17 how New WinStar will operate in the future and, more specifically, what changes to the
18 pre-existing Old WinStar business plan are needed in order for New WinStar to provide
19 high quality competitive telecommunications services at economical rates to customers and
20 to operate in a way that will assure its long term ability to remain a viable competitor in the
21 marketplace. As described below, Old WinStar in consultation with New WinStar, has
22 now determined that continued provision of Facilities-Based Wireline Service, which
23 relies upon the resale of certain local services provided by competing carriers, must be
24

25 ² See Emergency Joint Application of WinStar Wireless, Inc. and WinStar
26 Communications of Arizona, LLC for Approval of the Assignment of Assets and Authorizations
27 to Provide Telecommunications Services, Docket Nos. T-03-23A-02-0052 and T-03670A-02-
0052 (filed Jan. 18, 2002) (“Transfer Application”).

1 discontinued because such services cannot currently be provided in a way that would
2 permit New WinStar to offer them at cost-competitive rates to subscribers and are
3 therefore not financially viable. Therefore, Applicants desire to discontinue Facilities-
4 Based Wireline Services to its customers as soon as possible.

5 **II. REQUEST FOR EXPEDITED TREATMENT**

6 WinStar could not have filed the Discontinuance Application as part of or at the same
7 time as the Transfer Application because New WinStar had not, as of that time, had an
8 opportunity before the Bankruptcy Court's Sale Order to review in detail the operations of
9 Old WinStar.³ Since that time, as Applicants determined that certain of the Old WinStar
10 services are not viable, they have promptly taken steps to comply with the applicable
11 discontinuance rules at the Federal Communications Commission ("FCC") and state
12 regulatory commissions.⁴ Within the last week, New WinStar has made a decision that upon
13 taking control of the network it will be unable to continue the Facilities-Based Wireline
14 Service. Old WinStar promptly notified all of its existing affected customers and the
15 Applicants are promptly filing this Application. A copy of the discontinuance notice sent to
16 customers is attached hereto as Exhibit A. Applicants request that the Commission grant this
17 Application expeditiously to permit discontinuance on the timetable noticed to affected
18 customers.

22 ³ Although it would certainly have been preferable to make such determinations prior to
23 the purchase, the exigencies of the bankruptcy proceeding did not permit New WinStar to
24 completely review Old WinStar's operations and obligations, since there was an imminent threat
25 that Old WinStar would have been forced to discontinue service precipitously, absent the funding
26 provided by New WinStar.

27 ⁴ 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.

ROSHKA HEYMAN & DEWULF, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 **III. CONTACTS**

2 Correspondence or communications pertaining to this Application should be
3 directed to Old WinStar's counsel:

4 Michael W. Patten, Esq.
5 Roshka Heyman & DeWulf, PLC
6 One Arizona Center
7 400 East Van Buren Street, Suite 800
8 Phoenix, AZ 85004-3906
9 (602) 256-6100 (Tel)
10 (602) 256-6800 (Fax)
11 mpatten@rhd-law.com (E-Mail)

12 with a copy to:

13 Jean L. Kiddoo, Esq.
14 Brett P. Ferenchak, Esq.
15 Swidler Berlin Shereff Friedman, LLP
16 3000 K Street, N.W., Suite 300
17 Washington, D.C. 20006-5116
18 (202) 424-7834 (Tel)
19 (202) 424-7645 (Fax)
20 JLKiddoo@swidlaw.com (E-Mail)
21 BPFerenchak@swidlaw.com (E-Mail)

22 and:

23 Kimberley A. Bradley
24 Senior Director of Regulatory Affairs
25 WinStar Wireless, Inc.
26 1850 M Street, N.W., Suite 300
27 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.

1 **IV. DESCRIPTION OF DISCONTINUANCE**

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

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

4 WinStar Wireless, Inc.
5 2350 Corporate Park Drive
6 Herndon, Virginia 20171

7 WinStar Communications of Arizona, LLC maintains its principal place of business
8 at:

9 WinStar Communications of Arizona, LLC
10 520 Broad Street
11 Newark, New Jersey 07102

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

13 Upon obtaining the necessary approval, WinStar intends to discontinue the
14 provision of only its Facilities-Based Wireline Services, including both local exchange and
15 interexchange telecommunications services in Arizona. These are services in which
16 WinStar purchases local facilities from an underlying carrier (most often the incumbent
17 local exchange carrier ("ILEC")), but at times another competitive local carrier ("CLEC"))
18 which it uses to deliver subscribers' calls to the WinStar switch. Other Old WinStar
19 services will not be affected by this discontinuance.⁵

20 **C. Date of Planned Service Discontinuance**

21 WinStar anticipates discontinuing Facilities-Based Wireline Services on or before
22 April 29, 2002, or as soon as reasonably possible upon completion of the necessary federal

23 ⁵ Old WinStar currently also provides local exchange and interexchange services in
24 Arizona through Old WinStar's fixed wireless facilities at their buildings ("Fixed Wireless
25 Services"), which avoid the need to use another carrier's facilities to reach a subscriber premises,
26 and also provides local services through "full service" resale of the local services of the ILEC
27 ("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 application. Should WinStar determine that it will
also discontinue additional classes of service in Arizona in the future, it will make the appropriate
filing with this Commission.

1 and state regulatory notice periods and, where necessary, receipt of approvals, and/or the
2 transition of all Facilities-Based Wireline Services customers to the services of other
3 carriers.

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

5 WinStar will be discontinuing only Facilities-Based Wireline Services in Arizona.
6 Primarily, the affected customers are located in the Phoenix metropolitan area. The
7 discontinuance of services described above will affect approximately 238 customers in
8 Arizona. WinStar will continue to provide other telecommunications services to
9 approximately 915 service locations in Arizona.

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

11 Individual written notice was provided to each customer impacted by the proposed
12 discontinuance via first class mail on March 15, 2002. A copy of the notice is attached
13 hereto as Exhibit A. The notice identifies the services that WinStar is seeking to
14 discontinue and the date on which the discontinuance is expected to occur. The notice also
15 provides WinStar's customers with a toll-free customer service number and website
16 reference for information and questions relating to the discontinuance or for assistance in
17 selecting a new service provider. WinStar also will publish legal notice of this application
18 as provided by A.A.C. R14-2-1107.B.

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

20 In addition to providing affected customers notice of the discontinuance, WinStar
21 will be taking additional steps to help provide for continuity of their service. WinStar's
22 customer service department will monitor the transition of customers away from its
23 network and will, where appropriate, call customers who have not responded to the
24 discontinuance or switched to another carrier within a short period following the notice. In
25 addition, through its website, WinStar is providing customers with a list of some of the
26 alternative carriers that provide service in the customer's service area. WinStar will also
27

1 work with alternative carriers to effectuate a seamless transition of the affected customer to
2 the alternative carrier's network.

3 **G. Treatment of Deposits**

4 Old WinStar does not generally require deposits of its subscribers, and is currently
5 reviewing the accounts of customers affected by the discontinuance to determine whether
6 any deposits were collected from these customers.

7 **H. List of Alternative Utilities Providing Similar Services**

8 Alternative utilities providing similar services include, but are not limited to, Qwest,
9 AT&T, MCI WorldCom, Cox, Allegiance, XO Communications, McLeodUSA and Level
10 3.

11 **V. CIRCUMSTANCE OF DISCONTINUANCE**

12 Since the Transaction was approved by the Bankruptcy Court, Old and New
13 WinStar have concentrated on a managed, orderly transition of the business and
14 reevaluation of the business plan. As a result of this concerted effort to assure that the new
15 company will not face the financial difficulties that brought Old WinStar to bankruptcy,
16 management has determined that certain types of services are not appropriate for New
17 WinStar's business plan because of the large financial losses that would be incurred if such
18 service is continued.

19 Specifically, financial analysis by New WinStar indicates that the Facilities-Based
20 Wireline Services that are being discontinued have been a large reason for the losses
21 suffered by Old WinStar and therefore contributed significantly to its financial decline and
22 the resulting uncertainty and possibility of disruption for its customers. Indeed, recent
23 analysis by New WinStar indicates that such services represent approximately 48% of the
24 cost of revenue for the provision of switched network voice telephony, while only
25 accounting for approximately 12.5% of its customers. Moreover, the cost involved in
26 providing Facilities-Based Wireline Services, according to analysis by New WinStar, is
27 approximately 130% of the revenue those services produce, yet a rate increase sufficient to

1 make the services profitable would be competitively impossible. Clearly, losses of this
2 magnitude were a major factor contributing to the need for Old WinStar to seek Chapter 11
3 status. It therefore would be imprudent in the extreme to perpetuate the same losses going
4 forward, and the drain on New WinStar's cash flow would put pressure on its service rates
5 for its Fixed Wireless Services. Therefore, WinStar is realistically faced only with the
6 option to discontinue these services.

7 **VI. PUBLIC INTEREST CONSIDERATIONS**

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

16 **VII. CONCLUSION**

17 For the foregoing reasons, WinStar respectfully requests that the Commission
18 approve its Application to discontinue certain telecommunications services. WinStar also
19 respectfully requests expedited treatment and approve the Application on or before April
20 29, 2002.

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RESPECTFULLY SUBMITTED March 20, 2002.

WINSTAR WIRELESS, INC.
WINSTAR COMMUNICATIONS OF ARIZONA, L.L.C.

BY: 
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ORIGINAL and TEN (10) COPIES of the
foregoing filed March 20, 2002, with:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

COPIES of the foregoing hand-delivered
March 20, 2002, to:

Christopher Kempley, Esq.
Chief Counsel, Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

Ernest G. Johnson
Director, Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007



VERIFICATION

I, Geoffrey Rochwarger, state that I am Chief Operating Officer of Winstar Communications of Arizona, LLC, the Applicant in the foregoing Application; that I am authorized to make this Verification on behalf of Winstar Communications of Arizona, 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.



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

VERIFICATION

I, Joseph M. Sandri, Jr., state that I am Senior Vice President and Regulatory Counsel of Winstar Wireless, Inc., the Applicant in the foregoing Application; 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 15th 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: [REDACTED]

Service Address: [REDACTED], Phoenix, AZ 85029-4726

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 29, 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 14th 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. 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.