

DT 02-008

**WINSTAR WIRELESS, INC.,  
AND WINSTAR COMMUNICATIONS, LLC**

**Order Granting Petition with Regard to Authority to Operate as  
a Competitive Toll Provider and as a Competitive Local  
Exchange Carrier to Winstar Communications, LLC**

**O R D E R    N O.    23,949**

**April 12, 2002**

**I.    BACKGROUND**

On January 18, 2002, Winstar Wireless, Inc. (Winstar Wireless) and Winstar Communications, LLC (Winstar Communications) (collectively, the Petitioners) filed with the New Hampshire Public Utilities Commission (Commission) an Emergency Joint Application for such authority as necessary for Winstar Wireless to convey its New Hampshire authorizations, operations and customers to Winstar Communications. The proposed transaction was approved by the U.S. District Court for the District of Delaware (Bankruptcy Court) as part of the multi-faceted Chapter 11 bankruptcy proceedings involving Winstar Wireless and its corporate hierarchy. The Bankruptcy Court determined a number of requirements for the implementation of the Chapter 11 plan and provided a 120 day regulatory compliance period in order to accomplish the goals of the plan effectively. As a result, the

Petitioners request action on their requests before April 17, 2002.

Winstar Wireless, a corporation organized under the laws of Delaware, is authorized as a Competitive Toll Provider (CTP) in New Hampshire under IXC No. 19297 (April 7, 1997), and as a Competitive Local Exchange Carrier (CLEC) pursuant to Commission Order No. 22,648, (July 8, 1997).

Winstar Communications is a recently-formed Delaware limited liability company; it is a direct subsidiary of Winstar Holdings, LLC. which, in turn, is 95% owned by IDT Advanced Communications Services, LLC, a wholly-owned subsidiary of IDT Corporation. The remaining 5% of Winstar Holdings, LLC is owned by the Winstar Wireless bankruptcy estate. IDT Corporation filed a verified statement with the Commission, attesting that it will provide financial support of the operations of Winstar Communications. The petition posits that IDT's and therefore, Winstar's, managerial, technical, and financial ability, assures that services will continue under the new management regime.

The Petitioners state that the transaction is intended to be and will be virtually transparent to customers according to the Petitioners. Winstar Communications intends

to adopt the tariffs of Winstar Wireless so there will be no change in customers' rates, services or terms and Winstar Communications will operate under the "Winstar" name.

According to the Petitioners, the public interest will be served by this transaction. They contend that the transaction will prevent the possible loss of service to customers and, further a revitalized, reorganized company will be a strong competitor in the telecommunications marketplace in New Hampshire.

The Petitioners state that customers were informed of the proposed transaction by letter dated December 21, 2001, which also assured customers of continuing service. The Petitioners intend to provide written notice to customers of the actual transfer of service and of the customers' rights to change carriers should they choose at the time of the transfer.

## **II. Commission Analysis**

RSA 374:22-g and N.H. Admin. Rules Puc 1304 govern CLEC status; Puc 1304.03 (e), (f) and (m) outline the requirements for transfer of CLEC authorization. We therefore analyze the petition as a request by Winstar Wireless to transfer its CLEC authorization according to those provisions.

RSA 374:22-o and N.H. Admin. Rules Puc 411 govern CTP status; Puc 411.02 prohibits the transfer of CTP authorization. We therefore consider the petition as a request from Winstar Communications for authorization as a CTP.

Although the rules permit a CLEC to transfer or lease its operations or rights to serve any customer, Commission rule Puc 1304.03(e) and (f)(2) require that prior to a transfer, the transferee obtain authorization from the Commission and that an uncertified transferee obtain CLEC certification prior to offering CLEC services. Pursuant to Puc Chapter 1300, an applicant's petition for certification as a CLEC shall be granted when the Commission finds that (1) all information listed in Puc 1304.02 has been provided to the Commission; (2) the applicant meets standards for financial resources, managerial qualifications, and technical competence; and, (3) certification for the particular geographic area requested is for the public good.

The Commission Staff (Staff) has reviewed Winstar Communications' petition for compliance with these standards. Staff reports that the company has provided all the information required by Puc 1304.02 and that the information provided supports Winstar's assertion of financial resources,

managerial qualifications, and technical competence sufficient to meet the standards set out in Puc 1304.01(b), (e), (f), and (g).

Winstar Communications requests a waiver of the surety bond requirement in Puc 1304.02(b). In support, Winstar Communications submitted a sworn statement that it does not require advance payments or deposits of their customers. Staff recommends granting the waiver.

Winstar Communications also requests a waiver of 1304.02(a)(6) which requires the filing of U.S.G.S based map of the areas in which service will be offered. Winstar avers that it will offer service only in those territories served by Verizon New Hampshire. Maps of that territory are already on file with the Commission. Staff recommends granting the waiver.

Based upon Staff's recommendation and our review of the record, we will grant Winstar Communications' request for CLEC authorization and approve the transfer of Winstar Wireless operations and customers to Winstar Communications. In making this finding, as directed by RSA 374:22-g, we have considered the interests of competition, fairness, economic efficiency, universal service, carrier of last resort, the

incumbent's opportunity to realize a reasonable return on its investment, and recovery by the incumbent of expenses incurred. This finding is further consistent with the Telecommunications Act of 1996 (TAct). Because Winstar has satisfied the requirements of Puc 1304.01(a), we will grant the petition.

We remind Winstar Wireless and Winstar Communications of their responsibilities to notify affected customers in writing 14 days prior to the change. Winstar Wireless shall provide any appropriate refunds to its customers, if allowed in the Chapter 11 plan.

Given that Winstar Communications will not charge customer deposits, we find reasonable Winstar Communications' request for a waiver of the requirement it post a surety bond to cover refunds of deposit. We find reasonable Winstar Communications' request for a waiver of the requirement that maps delineating the territory in which the applicant intends to provide service.

As part of its petition, Winstar Communications avers it will charge access rates no higher than by Verizon New Hampshire's present and future rates for intraLATA switched access. At any point Winstar Communications seeks to

exceed Verizon New Hampshire's access rates it will first seek Commission review. The Commission will monitor access rates as the intraLATA toll and local exchange markets develop, in order to avoid any inhibition of intraLATA toll competition in contravention of the Telecommunications Act of 1996.

Pursuant to Puc 1304.02(a)(7), applicants for CLEC certification agree to adhere to all state laws and Commission policies, rules and orders. We take this opportunity to draw attention to two rules in particular. Puc 1306.01(8) and Puc 1306.01(10), respectively, describe Enhanced 911 (E911) and Telecommunications Relay Service (TRS) as part of the minimum basic service that every CLEC must provide. Pursuant to Puc 1306.01(c), authorized CLECs are responsible to collect and properly remit the E911 surcharge, currently set at 42 cents per access line. Pursuant to Puc 1306.01(b), authorized CLECs are also responsible to collect and remit TRS charges, currently set at 8 cents per access line.

We note that as new competitors enter the market and request numbering resources, increased pressure is put on the 603 area code, so long as today's number assignment process remains in effect. As evidenced by our recent orders, we have serious concern for the maintenance and viability of the

603 area code and the North American Numbering Plan as a whole. We refer Winstar Communications to our orders on number resource optimization, including but not limited to Order No. 23,385 issued January 7, 2000, and Order No. 23,392 issued January 27, 2000. Accordingly, we will require that Winstar Communications request and use numbers responsibly and conservatively, and to join in exploring alternative mechanisms to use existing numbers as efficiently as possible.

Further we will withdraw the certification of Winstar Wireless to provide CTP and CLEC services within the State of New Hampshire. As Winstar Communications meets the qualifications for technical competence and financial strength required for CLEC certification in New Hampshire, we will certify Winstar as a CLEC.

Puc 411.02 governs the process for registration as a CTP. Staff reviewed the application and states that the required registration form is complete and that Winstar Communications is fully registered with the New Hampshire secretary of state in accord with RSA 374:25. We find that Winstar Communication has met the qualifications for certification as a CTP and, accordingly we will approve



Winstar's application to provide intraLATA toll service in New Hampshire. We will grant Winstar Communications registration under IXC 02-002-02. Concomitantly, we will withdraw Winstar Wireless' IXC 19297.

**Based upon the foregoing, it is hereby**

**ORDERED,** that a Certificate of Public Convenience and Necessity is GRANTED to Winstar Communications under IXC No. 02-002-021; and it is

**FURTHER ORDERED,** that Winstar Communications' petition for authority to provide switched and non-switched intrastate local exchange telecommunications services in the service territory of Verizon New Hampshire, is GRANTED, subject to all relevant Commission rules and orders; and it is

**FURTHER ORDERED,** that Winstar Communications' request for a waiver of the map filing requirement in Puc 1304.02(a)(6) is GRANTED; and it is

**FURTHER ORDERED,** that Winstar Communications' request for waiver of the surety bond requirement per Puc 1304.02(b) is hereby GRANTED subject to Winstar Communications' agreement not to collect any deposit, prepayment or advance payment prior to the provision of service; and it is

**FURTHER ORDERED,** that, should the petitioner fail to exercise the authority granted herein within two years of the date of this order, the authority granted shall be deemed withdrawn, null, and void; and it is

**FURTHER ORDERED,** that the Certificate of Public Convenience and Necessity issued to Winstar Wireless under IXC No. 19297 is withdrawn; that the certification of Winstar Wireless to provide local exchange service under Order No. 22,648 is also withdrawn; and it is

**FURTHER ORDERED,** that Winstar Communications file appropriate tariff pages encompassing the services, terms and rates of Winstar Wireless.

By order of the Public Utilities Commission of New Hampshire this twelfth day of April, 2002.

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Thomas Getz  
Chairman

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Susan S. Geiger  
Commissioner

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Nancy Brockway  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director and Secretary