

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Winstar Wireless, Inc. and Winstar Communications, LLC (U-5531-C) For Authority to Discontinue Certain Telecommunications Services in the State of California.

Application 02-03-045
(Filed March 21, 2002)

OPINION**Summary**

We grant authority to applicants Winstar Wireless, Inc. (Old Winstar) and Winstar Communications, LLC (New Winstar) to discontinue facilities-based local exchange and interexchange wireline services statewide, and fixed wireless services in the San Jose and San Diego markets. Application 02-03-045 is closed.

Background and Procedural History

We granted Old Winstar certificates of public convenience and necessity (CPCNs) to operate in California as a resale provider of interexchange services and as a facilities-based and resale provider of local exchange services in Decision (D.) 95-11-045 and D.95-12-057. Old Winstar was providing those services until very recently. However, on April 18, 2001, Old Winstar and certain of its affiliates filed for bankruptcy in Delaware, and it has operated under the protection of the United States Bankruptcy Court (Court) since that date.

On December 19, 2001, the Court approved the sale of the core domestic assets of Winstar Communications, Inc., the ultimate parent of Old Winstar, to

Winstar Holdings, LLC, a newly created entity. This sale contemplated the transfer of assets, including Old Winstar's CPCNs and customers, to New Winstar.¹ In D.02-03-021 (March 6, 2002) we granted the joint application of Old Winstar and New Winstar to conclude this transfer of assets.

The same parties now jointly request authority to discontinue facilities-based local exchange and interexchange wireline services in California, as well as facilities-based fixed wireless service in San Diego and San Jose. The applicants explain that this follows an extensive review of operations to determine the changes to the former Old Winstar business plan needed for New Winstar to provide high quality competitive telecommunications services at economical rates, and for assuring its long term viability as a competitive provider. Old Winstar had a customer base for the two types of services that was inadequate for viable operation.²

According to the application,

Individual written notice was provided to each customer impacted by the proposed discontinuance of Facilities-Based Wireline Services via first class mail on March 15, 2002. The notice identifie[d] the services that Winstar is seeking to discontinue and the date on which the discontinuance [was] expected to occur. The notice also clearly state[d] that discontinuance is "subject to regulatory approval." In addition, the notice provide[d] a toll-free customer service number and website

¹ New Winstar is a subsidiary of Winstar Holdings, LLC, and ultimately of IDT Corporation.

² Local exchange services provided through "full service" resale of the local services of Incumbent Local Exchange Carrier (ILEC) Services, and long distance services provided to customers on a presubscribed basis using ILEC access facilities will be unaffected by the cessation of the services affected by this application.

reference for information and questions relating to the discontinuance or for assistance in selecting a new service provider. The notice letter also explain[ed] that Winstar will assist customers to ensure continuity of their service.

* * *

Individual written notice was initially provided to each customer impacted by the proposed discontinuance of Facilities-Based Wireline Services and Fixed Wireless Services in San Diego and San Jose via first class mail on February 14, 2002. Affected customers were again notified of the discontinuance on March 20, 2002, with an extended proposed date of April 29, 2002, subject to regulatory approval. . . . Both notices identifie[d] the services that Winstar is seeking to discontinue, and the date on which the discontinuance [was] expected to occur, subject to regulatory approval. The notices also provide[d] customers with a toll-free customer service number and website reference for information and questions relating to the discontinuance or for assistance in selecting a new service provider. The March 20, 2002 notice letter also explain[ed] that Winstar will assist customers to ensure continuity of their service.

The applicants' customer service personnel assisted, and continue to assist, with this transition. Recent information furnished by the applicants indicate that all affected customers where Verizon is the underlying carrier have already migrated, and only a few remain where Pacific is the underlying carrier.

Verizon of California, Inc. (Verizon) filed a protest based principally on its concerns that the change would cause customer confusion and create a burden for Verizon as default carrier. Those concerns have now been entirely alleviated, and by letter dated July 17, 2002, to the administrative law judge Verizon advised that it was withdrawing its protest. SBC Pacific Bell (Pacific) intervened on the basis of its concern that the application did not request any Local Exchange Carrier to be designated as a default carrier for customers who do not voluntarily

discontinue or transfer their service with the applicants. Pacific's intervention was contingent upon the existence of the default carrier issue raised by Verizon, but because that issue no longer exists, we will treat this application as an ex parte matter.

Discussion

No customers should encounter overly adverse effects by discontinuance of the services at issue. Customers received adequate notice, and arrangements were made for a seamless transition to alternative carriers. Neither the need, nor the financial means, for providing these services now exists. We will grant the application and authorize the discontinuance of these services.

A competitive local carrier is typically not the carrier of last resort for its customers. Consequently, our primary concern is that customers receive proper notice of the withdrawal from service. This is equally true for interexchange carriers. D.97-06-096 articulates the notice requirements for customer transfers, following advice letter filing, and there are useful guidelines for adequate post-approval notice here:

1. The notice must be in writing;
2. The carrier must provide it to customers no later than 30 days before the proposed transfer,
3. The notice must contain a straightforward description of the transfer, any fees the customer will be expected to pay, a statement of the customer's right to switch to another carrier, and a toll-free number for questions; and
4. The notice and the carrier's description of service to customers must be included in the advice letter.

Although the applicants provided adequate notice of their intentions, information about options for making the transition a new carrier, and customer assistance to affected customers well before the anticipated 30-day transition date, out of an abundance of caution we will require the applicants to renotify

any remaining customers immediately and refrain from terminating service to those customers for 30 days after the such notice.

Commission Procedural Matters

This application was preliminarily categorized as a ratesetting. There were no appeals to the categorization. The application is now unopposed, and no hearing is necessary.

This is an uncontested matter in which the decision grants the requested relief. Therefore, pursuant to § 311 (g)(2) of the Pub. Util. Code, the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. The joint applicants' customers received adequate notice of the anticipated discontinuance sought to be authorized here.
2. There are alternative carriers to provide the services that are subject to the discontinuance sought to be authorized here.
3. The joint applicants have provided, and continue to provide, assistance to affected customers with arrangements for service by alternative carriers.
4. There is neither the public need nor the financial means to provide for continuing the services that are the subject of the application.

Conclusion of Law

The application should be granted, subject to the terms of the order.

O R D E R**IT IS ORDERED** that:

1. The application of Winstar Wireless, Inc., and Winstar Communications, LLC (applicants) to discontinue facilities-based local exchange and interexchange

wireless services in California, and fixed wireless services in San Jose and San Diego, is granted.

2. Prior to discontinuing service to customers, applicants shall renotify any remaining customers of their authorization to discontinue service and refrain from involuntarily terminating such service for 30 days after such notice.

3. Applicants shall immediately renotify any remaining customers who will be affected by the discontinuance authorized herein, and shall refrain from terminating service to those customers for a period of 30 days from today.

4. This application is closed.

This order is effective today.

Dated _____, at San Francisco, California.