Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Section 63.71 Application of	)	WC Docket No. 04-284
Winstar Communications, LLC and Certain of its	)	Comp. Pol. File No. 688
Subsidiaries for Authority to Discontinue Domestic	)	
Telecommunications Services	)	

ORDER

Adopted: August 30, 2004 **Released:** August 30, 2004

By the Deputy Chief, Competition Policy Division:

I. INTRODUCTION

1. In this Order, we grant the application of Winstar Communications, LLC, and certain of its subsidiaries, including Winstar Communications of Arizona, LLC; Winstar of Delaware, LLC; Winstar of Georgia, LLC; Winstar of Hawaii, LLC; Winstar of Indiana, LLC; Winstar of Louisiana, LLC; Winstar of New Jersey, LLC; Winstar of New York, LLC; Winstar of Pennsylvania; Winstar of Virginia, LLC; and Winstar of West Virginia, LLC (collectively, Winstar or Applicants) to discontinue the provision of certain U.S. domestic telecommunications services, pursuant to section 214(a) of the Communications Act of 1934, as amended (the Act),[1] and section 63.71 of the Federal Communications Commission's (Commission) rules.[2] As explained in further detail below, in order to facilitate transition to alternative services, we grant to authority to discontinue service consistent with Winstar's agreement to continue providing service to the remaining commenters in this proceeding: 141 LLC (141); Associated Grocers, Incorporated (Associated Grocers); Canon Associates (Canon); International Securities Exchange, Inc. (ISE); KIE Supply Corporation (KIE); Liquidnet Holdings, Inc. (Liquidnet); Northwest Pipeline Corporation (Northwest) and Wall Street Access (WSA).

II. BACKGROUND

2. On July 15, 2004, Winstar filed an application with the Commission requesting authority, under section 214(a) of the Act and section 63.71 of the Commission's rules to discontinue the provision of certain domestic telecommunications services to customers in certain geographic areas. Specifically, Winstar seeks authority to discontinue ATM, frame relay, and switched private line services to non-federal customers in the District of Columbia and all states except Alaska, Maine, and Vermont. Additionally, Winstar requests authority to discontinue local, domestic and international long distance, toll free, and other high-speed data transmission services to non-federal customers in Connecticut, the District of Columbia, Maryland, New Jersey, New York, and Virginia. In a letter dated July 30, 2004, Winstar clarifies that, in this application, it also seeks authority to discontinue high-speed data transmission services and/or local exchange, long distance and toll free services to a relatively small number of non-federal customers located in Arizona, California,

[1] 47 U.S.C. § 214(a).

[2] 47 C.F.R. § 63.71.

Colorado, Connecticut, Florida, Illinois, Indiana, Massachusetts, Minnesota, Pennsylvania, Rhode Island, Texas and Washington.[3] Winstar states that it plans to discontinue the relevant services to these customers on August 31, 2004 (for service locations outside of Oregon) and September 30, 2004 (for service locations in Oregon). In that letter, Winstar further states that it provided written notice to all affected customers by one of three letters mailed out on either June 15, 2004, June 18, 2004, or June 30, 2004 in conformance with section 63.71(a) of the Commission's rules.

3. By Public Notice issued July 30, 2004, the Commission notified the public that, in accordance with section 63.71(c), the application would be deemed to be automatically granted on the thirty-first (31st) day after the release date of the notice, unless the Commission notified Winstar that the grant would not be automatically effective.[4] The Commission further noted that Winstar indicated in its application that it would not discontinue service until August 31, 2004 (for service locations outside of Oregon) and September 30, 2004 (for service locations in Oregon). Accordingly, the Commission stated that pursuant to section 63.71(c), and absent further Commission action, Winstar could not terminate services to the customers affected by this application until August 31, 2004 or September 30, 2004, as applicable. The Commission received nine comments in response to the Public Notice and Winstar's notice to its customers.[5] Specifically, 141, Associated Grocers, Garden State, ISE, KIE, Liquidnet, Northwest and WSA - all of which are customers of Winstar in the affected areas - filed comments objecting to the proposed discontinuance on the grounds that they could not fully transition to alternative service by the proposed discontinuance date.[6] In addition, Canon filed a comment seeking compensation for expenses associated with migration to another carrier.[7] Subsequently, Canon informed the Commission that it wished to seek additional time for migrating to another carrier.[8] In a letter dated August 13, 2004, Garden State withdrew its request for additional time indicating that it had reached an agreement with Winstar that allows for a smooth transition to alternative services.[9] On

[3] Winstar indicates that it is non-dominant with respect to these services. Winstar also states that this application does not affect its federal government customers; Winstar's fixed wireless services and offerings supporting mobile carrier infrastructures; cable, Wi-Fi and other backhaul systems; private circuits; closed networks; and spectrum lease offerings, all offered nationwide.

[4] *Comments Invited on Application of Winstar Communications, LLC and Certain of its Subsidiaries to Discontinue Domestic Telecommunications Services*, Public Notice, WC Docket No. 04-284, Comp. Pol. File No. 680, DA 04-2442 (rel. July 30, 2004).

[5] *See* 141 Comments, Associated Grocers Comments, Canon Comments, Garden State Micro, Inc. (Garden State) Comments, ISE Comments, KIE Comments, Liquidnet Comments, Northwest Comments and WSA Comments.

[6] *See* 141 Comments at 2 (seeking to delay the discontinuance until October 15, 2004); Associated Grocers Comments at 1 (objecting to the proposed timeframe for the discontinuance); ISE Comments at 1 (seeking to delay transfer of IP addresses until December 31, 2004); KIE Comments at 1 (seeking a delay of the discontinuance until November 30, 2004); Liquidnet Comments at 1 (seeking a delay of the discontinuance); Northwest Comments at 2 (seeking a delay until September 30, 2004); WSA Comments at 2 (seeking to delay the discontinuance until September 30, 2004).

[7] Canon Comments at 1.

[8] E-mail from James E. Rohan, Canon Associates, to John Adams, Attorney, Federal Communications Commission, dated August 19, 2004 and submitted into the record August 30, 2004 (Canon Request).

[9] Letter from Edward J. Buzak, Counsel to Garden State, to the Federal Communications Commission (dated August 13, 2004) (Garden State Withdrawal Letter).

August 27, 2004, Winstar filed a letter indicating that it has agreed to continue to provide service to facilitate these customers' transition to alternative services.[10]

4. Section 214(a) of the Communications Act, as amended, states that "[n]o carrier shall discontinue, reduce, or impair service to a community, or part of a community, unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby."[11] The primary purpose of this requirement is to reduce the harm to consumers caused by discontinuances of service, which is an important aspect of the Commission's general obligation under the Communications Act to protect and promote the public interest.[12] As the Commission has stated, "we have retained the right to delay grant of a discontinuance authorization if we believe an unreasonable degree of customer hardship would result,"[13] and will review each application to determine whether proper notice has been given, whether customers or other end users are able to receive service or a reasonable substitute from another carrier, and whether the public convenience and necessity is otherwise adversely affected.[14]

5. The Commission has considerable discretion in determining whether to grant a carrier authority to discontinue service pursuant to section 214.[15] Balancing the interests of the carrier and the affected user community, the Commission considers a number of factors including: (1) the financial impact on the common carrier of continuing to provide the service; (2) the need for the service in general; (3) the need for the particular facilities in question; (4) the existence, availability, and adequacy of

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[10] *See* Letter from Danielle C. Burt, Swidler, Berlin, Shereff, Friedman, LLP, Counsel for Winstar Communications, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-284 (August 27, 2004). Winstar indicates that it: (1) has agreed not to discontinue service on August 31, 2004, to the customers that have filed, and have not withdrawn, comments in this docket; (2) has agreed to continue to provide service and work with these customers to ensure a smooth transition until they move to another carrier, or until the Commission determines that Winstar can discontinue service; (3) requests that the Commission allow for a determination that in any event these customers have exceeded a reasonable period if they have not made sufficient arrangements for services within a reasonable time after August 31, 2004, which Winstar submits should be September 30, 2004, in most cases, and October 15, 2004 in the case of 141; (4) ported Canon to a new service provider on August 25, 2004 pursuant to a request from the new provider; (5) reached an agreement with ISE on August 20, 2004 to transition IP addresses as requested by ISE; (6) understands that Liquidnet already transitioned its services to another carrier on August 1, 2004; and (7) has agreed to continue providing service to 141 until October 15, 2004 based on the extenuating circumstances posed by the Republican National Convention. *Id*. At 1-2.

[11] 47 U.S.C. § 214(a).

[12] *See* 47 U.S.C. § 201.

[13] *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, First Report and Order, CC Docket No. 79-252, 85 FCC 2d 1, 49 (1980) (*Competitive Carrier First Report and Order*).

[14] *See* 47 C.F.R. § 63.71(a); *see, e.g., AT&T Application to Discontinue Interstate Sent-Paid Coin Service Not Automatically Granted*, Public Notice, NSD File No. W-P-D-497 (Aug. 3, 2001) (requiring AT&T to show how it will minimize the negative impact on the affected customers).

[15] *FCC v. RCA Communications, Inc.*, 73 S. Ct. 998, 1002 (1953). *See also Verizon Telephone Companies, Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, Order, WC Docket No. 02-237, FCC 03-256 (rel. Oct. 22, 2003).

alternatives; and (5) increased charges for alternative services, although this factor may be outweighed by other considerations.[16]

III. DISCUSSION

6. We find that the record supports granting Winstar's request to discontinue service in accordance with its filed representations in this proceeding. Specifically, and as stated above, Winstar indicates that it has agreed to continue to provide services to 141, Associated Grocers, Canon, ISE, KIE, Liquidnet, Northwest, and WSA.[17] On the basis of Winstar's agreement and considering the five factors identified by the Commission for evaluating applications to discontinue service, we find that the proposed discontinuance will not result in an unreasonable degree of customer hardship, and, therefore, that there will be no adverse effect on the public convenience and necessity.[18]

7. Applying the first of the Commission's factors -- the financial impact of continuing to provide the service for the carrier seeking to discontinue -- we note that, in its application, Winstar specifically states that it has decided to discontinue the provision of certain services in a number of locations nationwide in order to maintain long term profitability and refocus its business plan.[19] We thus find that the financial impact of continuing to provide these services for an extended period beyond the planned discontinuance date could be burdensome. Applying factors two and three -- the need for the services in general and for the particular services in question -- we note that many commenters in this proceeding explain that the various services that they receive from Winstar are critical to their businesses.[20] Finally, considering factor four -- the existence, availability, and adequacy of alternatives -- the record indicates that some of the commenters may not have been able to fully transition to alternative

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[16] *Application for Authority Pursuant to Section 214 of the Communications Act of 1934 to Cease Providing Dark Fiber Service*, File Nos. W-P-C-6670 and W-P-D-364, 8 FCC Rcd 2589, 2600, para. 54 (1993) (*Dark Fiber Order*), *remanded on other grounds*, *Southwestern Bell v. FCC*, 19 F.3d 1475 (D.C. Cir. 1994). *See Verizon Telephone Companies, Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, Order, WC Docket No. 02-237, FCC 03-256 (rel. Oct. 22, 2003).

[17] *See* note 9, *supra* (describing Winstar's agreements with these commenters). We note that Garden State has withdrawn its comments in opposition to Winstar's application. Garden State Withdrawal Letter at 1. In addition, Liquidnet withdrew its comments on the same day Winstar filed its August 27, 2004 letter. E-mail from Sophia Lee, Deputy General Counsel, Liquidnet, Inc., to John Adams, Attorney, Federal Communications Commission, dated August 27, 2004 and submitted into the record on August 27, 2004. Finally, we note that KIE has indicated that it can complete its migration by September 30, 2004. E-mail from Charles Claybrook, Information Systems Manager, KIE Supply Corporation, to John Adams, Attorney, Federal Communications Commission dated August 26, 2004 and submitted into the record on August 27, 2004.

[18] We find that this is also consistent with our evaluation in prior orders of discontinuance applications involving similar circumstances. *See In the Matter of Section 63.71 Application of LDMI Telecommunications, Inc. for Authority to Discontinue the Provision of Domestic Telecommunications Services to Payphone Service Providers in Michigan and Ohio*, Order, Comp. Pol. File No. 648, 18 FCC Rcd 11301 (rel. May 30, 2003); *In the Matter of Cable & Wireless USA, Inc. Application for Authority to Discontinue Certain U.S. Domestic Telecommunications Services*, Order, Comp. Pol. File No. 663 (rel. Dec. 12, 2003).

[19] *See* Winstar Application at 5.

[20] *See, e.g.,* Garden State Comments at 1; ISE Comments at 1; KIE Comments at 1; Liquidnet Comments at 1; Northwest Comments at 2-4; WSA Comments at 1.

providers within the time allowed by Winstar's originally planned discontinuance date.[21] We find, however, as noted above, that the record in this proceeding makes clear that, to the extent commenters allege they would not be able to migrate within the proposed period, Winstar has provided sufficient assurances that it will maintain service for these customers for a reasonable, additional period of time in order to allow them to migrate. Given the circumstances, we find Winstar's request to discontinue service reasonable subject to its representations. After balancing the relevant factors, we therefore conclude that Winstar be permitted to discontinue its services in accordance with its filed representations.

IV. ORDERING CLAUSE

8. Accordingly, pursuant to sections 1, 4(i), and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 214, and sections 0.91, 0.291, and 63.71 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 63.71, IT IS ORDERED that the application of Winstar Communications, LLC, Winstar Communications of Arizona, LLC; Winstar of Delaware, LLC; Winstar of Georgia, LLC; Winstar of Hawaii, LLC; Winstar of Indiana, LLC; Winstar of Louisiana, LLC; Winstar of New Jersey, LLC; Winstar of New York, LLC; Winstar of Pennsylvania; Winstar of Virginia, LLC; and Winstar of West Virginia, LLC to discontinue domestic telecommunications IS GRANTED to the extent declared herein, consistent with Winstar's filed representations in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

William A. Dever, Jr.
Deputy Chief, Competition Policy Division
Wireline Competition Bureau

[21] *See* 141 Comments at 2; Associated Grocers Comments at 1; ISE Comments at 1; KIE Comments at 1; Liquidnet Comments at 1; Northwest Comments at 2; WSA Comments at 2. We note that the fifth factor, increased charges for alternative services, was raised as an issue in this proceeding by Canon's request for compensation for losses associated with its migration to another carrier. In balancing all of the factors, however, we do not find that Canon's concerns over the cost of transitioning to alternative services justify a denial of Winstar's request to discontinue services.