

The Office of the Public Counsel,)
)
Complainant,)
)
v.) **Case No. TC-2008-**
)
Winstar Communications, L.L.C.)
)
Respondent.)

The Office of the Public Counsel, pursuant to Section 386.390 RSMo. 2000 states the following as its Complaint against Winstar Communications, L.L.C.

2. Winstar Communications, L.L.C. is a telecommunications company and a public utility as defined in Section 386.020, RSMo 2000 and provides basic local exchange service to customers in Missouri under certificates of service authority issued by the Missouri Public Service Commission. Winstar is subject to the jurisdiction of the Public Service Commission, pursuant to Section 386.250 (2), RSMo.

3. As a provider of telecommunication service, Winstar is required to comply with state statutes and Commission rules requiring collection and a remittance of various charges and assessments and to make certain filings of reports concerning annual operations and service quality.

4. On or about February 8, 2008, the Public Service Commission obtained a default judgment in the St. Louis County Circuit Court (Cases No. 07SL-CC00576) against Winstar for money damages in Count I representing unpaid obligations for Deaf Relay Service and Equipment Distribution Fund surcharges under Section 209.255 and applicable Commission orders that have not been paid since April, 2002. The judgment on Count I of the St Louis County case together with the court's award of attorney fees and costs to the Public Service Commission remain unpaid. A certified copy of the Circuit Court Judgment By Default is attached as Exhibit 1 to this Complaint.

5. On or about February 8, 2008, the Public Service Commission obtained a default judgment in the St. Louis County Circuit Court (Cases No. 07SL-CC00576) against Winstar for statutory penalties in Count II representing penalties for Winstar failing to meet payment and filing deadlines and obligations for the Missouri Universal Service Fund surcharges, Deaf Relay fund, quarterly quality of service reports, and Annual Reports.

6. On or about February 8, 2008, the Public Service Commission obtained a default judgment in the St. Louis County Circuit Court (Cases No. 07SL-CC00576) against Winstar in Count III finding that Winstar violated statutes and Mo Public Service Commission rules relating to the collecting for Deaf Relay, Missouri USF and other states.

7. The circuit court found that immediate and irreparable injury, loss or damage would result to the Deaf Relay Service and Equipment Distribution Fund, and the Missouri USF if Winstar is not enjoined from violating state statutes and Commission orders.

8. Winstar failed to respond to the Commission's suit and did not enter an appearance in the circuit court action.

9. Notwithstanding the lawful judgment of the Circuit Court, Winstar has failed to pay the judgments awarded.

10. Winstar has continued to violate Missouri statutes and Commission rules although enjoined by the St. Louis Circuit Court not to do so.

11. Public Counsel's Chief Utility Economist Barbara Meisenheimer investigated the status of Winstar's payments to the USF, payments required to be made to the Deaf Relay, and payments for general assessment functions. She also investigated Winstar's compliance or non-compliance with Annual Report filing (Section 392.210) or filing quarterly quality of service reports. She then researched Winstar's regulatory status in some other states. The results of her investigation, attached as Exhibit 2, is the prefiled sworn testimony of Public Counsel expert witness Barbara Meisenheimer.

12. Winstar has demonstrated conduct and operation in the State of Missouri that is unlawful, unjust, unreasonable and demonstrates a pattern of conduct that is not in the interests of customers and the public and is not in the public interest.

13. Section 392.220.6, RSMO provides for the revocation of the certificate of service.

14. Section 392.455 (1) requires that an applicant for a certificate of service for basic local service must possess sufficient technical, financial and managerial resources and abilities

15. Winstar has shown that it no longer possesses sufficient managerial resources and abilities to provide basic local service in accordance with state law and Commission rules.

Wherefore, Public Counsel prays that the Commission: A) issue an order to Winstar to show cause why its certificate of service should not be revoked and terminated; B) establish a procedural schedule and provide for an evidentiary hearing on Public Counsel's complaint and on whether or not Winstar's certificate should be revoked; C) to show cause why it did not comply with the Judgment By Default entered on February 8, 2008 in St. Louis County Circuit Court (Case No. 07SL-CC00576B) and find that this violation is a continuing one; D) direct its general counsel to seek the maximum penalty for each day's continuance of this violation; E) direct its general counsel to pursue all remedies to implement and enforce termination of Winstar's certificate of service authority, F) provide for the orderly transition of customers from Winstar to other carriers; and G) such other relief as the Commission deems proper.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

BY: /s/ Michael F. Dandino

Michael F. Dandino (24590)

Deputy Public Counsel

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 18th day of April, 2008

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/s/ Michael F. Dandino

Michael F. Dandino

IN THE CIRCUIT COURT FOR THE COUNTY OF ST. LOUIS
STATE OF MISSOURI

FILED

FEB - 8 2008

State of Missouri ex rel. Missouri Public
Service Commission,

Plaintiff,

v.

Winstar Communications, L.L.C.

Defendant.

JOAN M. GILMER
CIRCUIT CLERK, ST. LOUIS COUNTY

Case No. 07SL-CC00576

Division No. 13

JUDGMENT BY DEFAULT

The Court, having reviewed the Plaintiff's Motion for Entry of Default Judgment on Plaintiff's Petition (although Plaintiff filed three separate petitions, for the purposes of this Judgment, the petitions will be treated as one petition in three counts: Count One for Money Judgment, Count Two for Penalties, and Count Three for Permanent Injunction), finds that Plaintiff is entitled to judgment by default for Defendant's failure to answer or otherwise defend all three counts of Plaintiff's Petition, and for Defendant's failure to answer interrogatories. Judgment entered in favor of Plaintiff and against Defendant as follows:

COUNT I

JUDGMENT FOR MONEY DAMAGES

Default judgment having been granted in favor of the Plaintiff in the above-captioned cause due to Defendant's failure to plead, answer, or otherwise defend Plaintiff's Petition for Money Judgment, and for Defendant's failure to answer interrogatories, the Court accepts the facts pleaded in Plaintiff's Petition for Money Judgment as true. Being fully advised in the premises, it is the judgment of this Court:



That Defendant Winstar Communications, L.L.C. is a “telecommunications company” and a “public utility” as defined in Section 386.020 RSMo, and provides basic local exchange service to customers in Missouri under certificates of service authority issued by the Missouri Public Service Commission. Furthermore, Winstar is subject to the jurisdiction of the Missouri Public Service Commission, pursuant to Section 386.250(2) RSMo.

That as a provider of basic local exchange service, Defendant is required to comply with state statutes and Commission rules requiring the collection and remittance of Deaf Relay Service and Equipment Distribution Fund surcharges. Defendant is also bound by the Commission’s orders in Case No. TO-2003-0171, Case No. TO-2005-0308, and Case No. TO-2007-0306. The Court finds that Defendant has not made remittance of the deaf relay service surcharge as required by Section 209.255 RSMo and the final orders of the Commission. Defendant has not remitted any monies to the Deaf Relay fund since their certificate was granted in April of 2002.

That Defendant Winstar Communications, L.L.C. will remit \$17,816 to the Missouri Public Service Commission for payment into the Deaf Relay Service and Equipment Distribution Fund, plus interest in the amount of nine percent per annum. Defendant will pay Plaintiff reasonable attorney’s fees in the amount of \$24,862.50, and costs of \$100.

COUNT II

JUDGMENT FOR PENALTIES

Being fully advised in the premises, it is the judgment of this Court:

That Winstar Communications, L.L.C. failed to remit Missouri Universal Service Fund Surcharges pursuant to Section 392.248, failed to remit Deaf Relay fund surcharges pursuant to Section 209.255, failed to submit its 2006 Annual Report in a timely fashion pursuant to Section 392.210, and failed to submit quarterly quality of service reports for the first and second quarters of 2007 pursuant to 4 CSR 240-3.550(5). Therefore, Defendant is in violation of several state statutes and Commission rules, and the final orders of the Missouri Public Service Commission in Case No. TO-2003-0171, Case No. TO-2005-0308, Case No. TO-2007-0306, and Case No. TO-98-329.

For failure to remit Deaf Relay fund surcharges, Defendant is subject to a penalty of not less than one hundred dollars, nor more than two thousand dollars for each and every offense. The failure to remit surcharges is a cumulative offense for every month pursuant to Section 386.590, RSMo, and each day from the end of each month from August 31, 2002 to present is a separate and distinct violation subject to a penalty of not less than one hundred dollars, nor more than two thousand dollars.

For failure to remit Missouri Universal Service Fund surcharges, Defendant is subject to a penalty of not less than one hundred dollars, nor more than two thousand dollars for each offense. Defendant's reported revenue is above the threshold amount pursuant to 4 CSR 240-31.010(1). The surcharges due the Missouri Universal Service Fund were due on January 22, 2006, April 23, 2007, and July 23, 2007. Defendant is therefore subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each day from January 22, 2006, April 23, 2007, and July 23, 2007 to present.

For failure to submit a timely Annual Report, the Court finds that Defendant is in violation of 392.210.1 RSMo and 4 CSR 240-3.540(1). Defendant filed their Annual Report on July 12, 2007, well beyond the required filing date of April 16, 2007. Defendant is therefore subject to a penalty of one hundred dollars for each day between April 16, 2007 and July 12, 2007, pursuant to Section 392.210.1.

Further, the Court finds that Defendant violated 4 CSR 240-3.550(5) and failed to file Quarterly Quality of Service Reports for the first and second quarters of 2007. For failure to timely submit Quarterly Quality of Service Reports, Defendant is subject to a penalty of not less than one hundred dollars, nor more than two thousand dollars per day. The reports were due no later than May 15, 2007 and August 14, 2007.

IT IS THEREFORE ORDERED:

That Defendant will remit penalties in the amount of \$20,000 to the public school fund of the State of Missouri, pursuant to Section 386.600 RSMo, for failure to remit Deaf Relay fund surcharges (this amount also includes penalties for failure to for failure to file Quarterly Quality of Service Reports for the first and second quarters of 2007 pursuant to Section 386.600 RSMo). That Defendant will remit penalties in the amount of \$1,500 to the public school fund of the State of Missouri, pursuant to Section 386.600 RSMo, for failure to remit Universal Service Fund surcharges. That Defendant will remit penalties in the amount of \$5,700 to the public school fund of the State of Missouri, pursuant to Section 386.600 RSMo, for failure to timely submit its Annual Report.

COUNT III

Being fully advised in the premises, it is the judgment of this Court:

That as a provider of basic local exchange service, Defendant is required to comply with state statutes and Commission rules requiring the collection and remittance of Deaf Relay Service and Equipment Distribution Fund surcharges, and the collection and remittance of Missouri Universal Service Fund surcharges. Defendant is also bound by the Commission's orders in Case No. TO-2003-0171, Case No. TO-2005-0308, Case No. TO-2007-0306, and Case No. TO-98-329. The Court finds that Defendant has not made remittance of the deaf relay service surcharge as required by Section 209.255 RSMo and the final orders of the Commission, and has not made remittance of the Missouri Universal Service Fund surcharges in accordance with Section 392.248.3 RSMo, 4 CSR 240-31.065 and the final orders of the Commission.

Further, the Court finds that immediate and irreparable injury, loss, and damage will result to the Deaf Relay Service and Equipment Distribution Fund and the Missouri Universal Service Fund if the Defendant is not enjoined from violating state statutes and Commission rules and orders, and therefore failing to collect and remit surcharges for the Deaf Relay fund and the Missouri Universal Service Fund and otherwise complying with state laws and Commission rules governing the providers of basic local exchange telephone service.

IT IS THEREFORE ORDERED:

That Defendant Winstar Communications, L.L.C. is hereby ordered to collect and remit surcharges for the Missouri Deaf Relay Service and Equipment Distribution Fund and for the Missouri Universal Service Fund. Defendant is ordered to otherwise comply with state laws and Commission rules governing the providers of basic local exchange telephone services.

It is further ordered that this injunction will remain in effect until dissolved by this

Court.

Entered: 2/8/08

A handwritten signature in cursive script, appearing to read "Barbara W. Wallace", written over a horizontal line.

The Honorable Barbara W. Wallace
Judge, 21st Judicial District

I certify and attest that the above is a true copy of the original record of the Court in case number 07SLCC 576 as it appears on file in my office.

Issued

March. 18 2008



JOAN M. GILMER, Circuit Clerk
St. Louis County Circuit Court

By

Keyonna Marie Wilson
Deputy Clerk

Exhibit No.: _____
Issue(s) Cancellation of Certificates of Service
Authority
Witness/Type of Exhibit: Meisenheimer/Direct
Sponsoring Party: Public Counsel
Case No.: TC-2008-_____

DIRECT TESTIMONY
OF
BARBARA A. MEISENHEIMER

Submitted on Behalf of the Office of the Public Counsel

OFFICE OF THE PUBLIC COUNSEL
vs.
WINSTAR COMMUNICATIONS LLC

Case No. TC-2008-_____

April 18, 2008

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Office of the Public Counsel, Complainant)

v.)

Winstar Communications, LLC, Respondent)

Case No. TC-2008-_____

AFFIDAVIT OF BARBARA A. MEISENHEIMER

STATE OF MISSOURI)

) ss

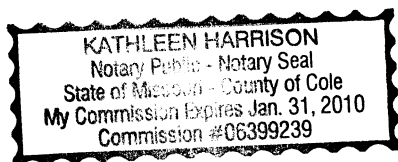
COUNTY OF COLE)


Barbara A. Meisenheimer, of lawful age and being first duly sworn, deposes and states:

1. My name is Barbara A. Meisenheimer. I am Chief Utility Economist for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my direct testimony.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.


Barbara A. Meisenheimer

Subscribed and sworn to me this 18th day of April, 2008.




Kathleen Harrison
Notary Public

My Commission expires January 31, 2010.

DIRECT TESTIMONY
OF
BARBARA A. MEISENHEIMER
WINSTAR COMMUNICATIONS LLC

CASE NO. _____

Summary

Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.

A. Barbara A. Meisenheimer, Chief Utility Economist, Office of the Public Counsel, P. O. Box 2230, Jefferson City, Missouri 65102.

Q. PLEASE SUMMARIZE YOUR EDUCATIONAL AND EMPLOYMENT BACKGROUND.

A. I hold a Bachelor of Science degree in Mathematics from the University of Missouri-Columbia and have completed the comprehensive exams for a Ph.D. in Economics from the same institution. My two fields of study are Quantitative Economics and Industrial Organization. My outside field of study is Statistics.

I have been with the Office of the Public Counsel since January 1996. I have testified on economic issues and policy issues in the areas of telecommunications, gas, electric, water and sewer. I am a past member of the Staff of the Federal/State Joint Board on Universal Service and currently assist the Public Counsel in his duties on the Missouri Universal Board.

1 Over the past 14 years I have also taught courses for the following institutions: University of
2 Missouri-Columbia, William Woods University, and Lincoln University. I currently teach
3 undergraduate and graduate level economics courses and undergraduate statistics for
4 William Woods University.

5 **Q. HAVE YOU TESTIFIED PREVIOUSLY BEFORE THIS COMMISSION?**

6 A. Yes, during my employment with the Office of the Public Counsel I have testified regularly
7 before the Missouri Public Service Commission (PSC or Commission) in
8 telecommunications, energy, natural gas, water and sewer cases as well as on rule making
9 and public interest issues.

10 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

11 A. Public Counsel requests that the Commission cancel or revoke the Certificates of Service
12 Authority granted to Winstar Communications LLC (Winstar) in TA-2002-353 and TA-
13 2002-352. Also, Public Counsel asks that the Commission take all steps necessary to protect
14 the customers and the public interest, including ordering Winstar to arrange for the orderly
15 transition of Winstar's current customers to alternative service providers.

16 Winstar Communications, LLC has repeatedly violated Missouri statutes and
17 Commission rules and orders regarding the collection and remittance of the Missouri
18 Universal Service surcharge. Winstar has also failed to make timely payment on mandatory

1 assessments, including the Commission assessment and Deaf Relay Service and Equipment
2 Distribution Fund assessment. Winstar has also failed to timely file the required Annual
3 Reports and Quality of Service Reports with the Commission.

4 The Commission and its Staff have taken extraordinary measures to seek Winstar's
5 compliance with the regulatory obligations that telecommunications operating in Missouri
6 and under authority granted by certificates issued by the Public Service Commission.
7 However, despite those efforts, Winstar continues a pattern of delinquent or missed
8 payments and late or missed filings. Winstar's chronic failure to fulfill its lawful obligations
9 and responsibilities as a Missouri telecommunications provider jeopardizes universal service
10 goals and is a burden to consumers, regulators, and competitors.

11 Winstar appears to have similar violations in some other states, including Florida,
12 Pennsylvania and Washington. Based on the evidence Winstar's lack of essential payment
13 and reporting performance in Missouri and based on reports of similar violations and non
14 performance in other states, Public Counsel contends that Winstar does not now possess
15 sufficient managerial expertise to provide telecommunications services in Missouri. It is no
16 longer in the public interest for Winstar to continue providing telecommunications services
17 in Missouri.

1 **Q. IS WINSTAR CURRENTLY DELINQUENT IN PAYING ASSESMENTS TO THE MISSOURI**
2 **UNIVERSAL SERVICE FUND?**

3 A. Yes. As of March 18, 2008, Winstar has not paid assessments, interest and late fees owed
4 and accumulated from November, 2007 to March 18, 2008. To the best of my information,
5 knowledge and belief, these obligations to the Universal Service Fund remain unpaid.

6 **Q. HAS WINSTAR PREVIOUSLY BEEN DELINQUENT IN PAYING ASSESMENTS TO THE MISSOURI**
7 **UNIVERSAL SERVICE FUND?**

8 A. Yes. Winstar has demonstrated a pattern of delinquency in paying Universal Service Fund
9 assessments since the 4th Quarter 2005. In a suit brought in the St. Louis County Circuit Court by the
10 Commission against Winstar for penalties for failure to pay universal service assessments (Case No.
11 07SL-CC00576), the Staff produced evidence that indicated that as of May, 2007, Winstar did not
12 submit Universal Service Assessments for the 4th Quarter 2005, or for any quarter of 2006 or for any
13 quarter of 2007.

14 **Q. IS WINSTAR DELINQUENT IN PAYING ASSESMENTS TO THE DEAF RELAY SERVICE AND EQUIPMENT**
15 **DISTRIBUTION FUND?**

16 A. Yes. Winstar has not paid any assessment to the Deaf Relay Service and Equipment
17 Distribution Fund since receiving certification in 2002.¹

18 **Q. IS WINSTAR DELINQUENT IN PAYING COMMISSION ASSESMENTS?**

1 A. Yes. Winstar has not paid its Fiscal Year 2008 Commission assessment that was due on July
2 15, 2007.² This is the annual assessment provided by statute and implemented and fixed
3 pursuant to Commission rules and by Commission orders that funds the operations of the
4 Commission.

5 **Q. WHAT TYPES OF INFORMATION HAS WINSTAR FAILED TO FILE WITH THE COMMISSION ON A**
6 **TIMELY BASIS?**

7 A. Winstar has failed to timely file its 2006 and 2007 Annual Reports. Winstar has also failed to file the
8 required Quality of Service Reports for the first, second and fourth quarters of 2007.³

9 **Q. IS IT APPROPRIATE FOR CARRIERS TO FAIL TO BILL OR TO RETAIN UNIVERSAL SERVICE**
10 **SURCHARGE REVENUES?**

11 A. No. The Commission mandated that telecommunications carriers impose an explicit
12 surcharge on customers' bills in order to fund the Low-income and Disabled component of
13 the Missouri Universal Service program. Once collected, carriers are to remit all surcharge
14 monies as an "assessment" to the Universal Service Fund.

¹ Information provided by Helen Davis, PSC Staff's Budget and Fiscal Services Department

² Information provided by Helen Davis, PSC Staff's Budget and Fiscal Services Department

³ Information provided by Mick Johnson, PSC Staff's Telecommunications Department

1 **Q. HOW ARE CONSUMERS AND COMPETITORS HARMED BY WINSTAR'S FAILURE TO PAY THESE**
2 **MANDATORY ASSESSMENT AND FEES?**

3 A. Commission assessments pay for the oversight that ensures the availability, integrity and
4 quality of service received by customers and supports a competitive framework in Missouri's
5 telecommunications markets.

6 Funding for universal service, deaf relay and adaptive telecommunications equipment,
7 consistent with the goals of the 1996 Telecommunications Act, promote the availability and
8 accessibility of telecommunications services by consumers that might otherwise be
9 underserved by competition.

10 **Q. WHAT ACTIONS HAS THE COMMISSION TAKEN TO SECURE WINSTARS COMPLIANCE WITH**
11 **MISSOURI STATUTES AND COMMISSION RULES AND ORDERS?**

12 A. In October, 2007, the Commission petitioned the Circuit Court for the County of St. Louis
13 seeking a money judgment, penalties, and a permanent injunction against Winstar. The
14 Company did not answer the petition or interrogatories and did not enter an appearance
15 although served and noticed. On February 8, 2008, the Circuit Court entered Judgment By
16 Default on all counts against Winstar's."

1 **Q. DOES WINSTAR HAVE SIMILAR VIOLATIONS IN OTHER STATES?**

2 A. Yes, I checked with regulatory bodies in other states about their experience with Winstar.
3 Winstar has also failed to pay universal service fees, regulatory fees and failed to submit
4 annual reports and other information in other states. In my testimony I provide three
5 examples of Winstar's specific violations in other jurisdictions. It is important to note that
6 these examples are not intended to be an exhaustive list, but rather are examples illustrating
7 that other state commissions have cancelled Winstar's authority to provide
8 telecommunications services for similar violations. While a telecommunications carrier can
9 avoid termination of authority by taking corrective action or by appealing the cancellation of
10 a service certificate, I was able to verify through contact with the respective regulatory
11 agency that in each of these three cases the termination of Winstar's service authority was
12 final.

13 **Q. PLEASE DESCRIBE YOUR EXAMPLES OF WINSTAR'S VIOLATIONS AND THE ACTIONS**
14 **TAKEN BY THE STATE COMMISSIONS.**

15 A. In December, 2007, in Docket UT-072078, the Washington State Utilities and
16 Transportation Commission (WUTC) revoked Winstar Communications LLC's registration
17 as a telecommunications provider in Washington. The WUTC cited Winstar's failure to file
18 2006 annual reports and to pay 2007 regulatory fees as the reasons for this action. The
19 WUTC Order is included in this testimony as Attachment 1.

1 In January, 2008, in Docket C-20078215, the Pennsylvania Utility Commission (PA PUC)
2 cancelled Winstar of Pennsylvania LLC's interexchange, competitive local and competitive
3 access certificates to provide telecommunications services in Pennsylvania. The PA PUC
4 cited Winstar's failure to pay Pennsylvania Universal Service assessments and to file
5 Telecommunications Relay Service Annual Access Line Summary Report and Annual
6 Tracking Report. . The PA PUC Order is included in this testimony as Attachment 2.

7 In June, 2007, in Docket No. 070347-TA, the Florida Public Service Commission (FL PSC)
8 cancelled Winstar Communications LLC's certificate to offer alternative access vendor
9 service (AAV) in Florida. The FL PSC cited Winstar's repeated failure to pay the
10 Regulatory Assessment Fee. The FL PSC Order is included in this testimony as Attachment
11 3.

12 **Q. DOES WINSTAR'S OPERATIONAL EXPERIENCE IN OTHER STATES WITH OUTSTANDING**
13 **PENALTIES AND ACTIONS FOR NONPAYMENT OF STATE UNIVERSAL SERVICE ASSESSMENTS**
14 **AND OTHER CHARGES SHOW THAT ITS CONDUCT IN MISSOURI IS NOT AN ISOLATED**
15 **PROBLEM OR CONCERN?**

16 **A.** Yes, it illustrates a pattern of conduct and management operations that gives Public Counsel
17 concern for the quality of service, soundness of management, and its ability to operate on a
18 fair and reliable basis with customers.

1 **Q. PLEASE IDENTIFY THE GROUNDS WHICH PUBLIC COUNSEL CONTENDS ARE THE**
2 **REASONABLE BASIS FOR THE COMMISSION TO REVOKE WINSTAR’S CERTIFICATES OF**
3 **SERVICE AUTHORITY FOR MISSOURI?**

4 A. Public Counsel suggests that the Commission would be justified and would be acting
5 lawfully and reasonably if it adopted the following as grounds for termination of Winstar’s
6 certificate of authority. Not only has Winstar failed to comply with its regulatory
7 responsibilities to pay into the Deaf Relay fund and MoUSF that resulted in PSC complaint
8 cases and the circuit court case to recover unpaid charges and to enjoin future
9 noncompliance. However, the efforts to date have not fazed Winstar and it continues to
10 refuse to pay its obligations and to comply with Missouri statutes and the Commission’s
11 Rules and Orders. This rogue conduct in Missouri, coupled with evidence of similar
12 violations and performance failures in other jurisdictions, is persuasive evidence that
13 Winstar’s management is unable or unwilling to meet the minimum requirements and
14 qualification for providing service in Missouri. Winstar’s continued operation under
15 Missouri certificates of authority does not promote the protection of the ratepayers or the
16 provision of adequate and reliable service. It is not in the public interest for Winstar to retain
17 the service certificates granted in TA-2002-353 and TA-2002-352. Therefore, Public
18 Counsel requests that the Commission revoke and terminate the Company’s service
19 certificates.

1 **Q. WHAT DO YOU SUGGEST AS A TRANSITIONAL PERIOD TO ARRANGE FOR THE ORDERLY**
2 **MIGRATION OF ITS CUSTOMERS TO ALTERNATIVE SERVICE PROVIDERS?**

3 A. Public Counsel suggests that, Winstar should be required (1) to immediately cease acquiring
4 new customers as of the effective date of the Commissions Order in this case, (2) to provide
5 written notice within 10 days to any existing customers that the customer must select an
6 alternative service provider within 30 days of the date of the notice.

7 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

8 A. Yes.

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the)	DOCKET UT-072078
)	
Revocation of Telecommunications)	ORDER 01
Registrations of the Companies Listed)	
on Attachment 1 for Failure to File)	ORDER REVOKING
Annual Reports and Pay Regulatory)	REGISTRATION AS A
Fees)	TELECOMMUNICATIONS
)	COMPANY
.....)	

1 **Synopsis:** *The Commission revokes the registrations of 10 telecommunications companies that failed to submit required reports and pay regulatory fees as required by RCW 80.04.080, RCW 80.24.010, and WAC 480-120-382 or WAC 480-120-385. A list of the 10 companies whose registrations the Commission revokes is attached as Appendix 1 to this Order.*

2 **Proceedings:** This proceeding involves enforcement of requirements in statute and rule for telecommunications companies to submit annual reports and pay regulatory fees under RCW 80.04.080, RCW 80.24.010, WAC 480-120-382, and WAC 480-120-385. The Washington Utilities and Transportation Commission (Commission) notified 12 telecommunications companies that their registrations as telecommunications companies would be revoked for failure to submit annual reports or pay regulatory fees, and offered each company the opportunity to respond by coming into compliance or requesting a hearing within 30 days following service of the notice.

I. BACKGROUND

3 Telecommunications companies registered with the Commission must file annual reports reflecting their operations for the past year and regulatory fees for the current year by May 1. After reviewing the annual reports filed and regulatory fees paid by telecommunications companies following the May 1, 2007, deadline, Commission staff identified a list of 12 companies that failed to submit annual reports for 2006 and

pay regulatory fees for 2007 in violation of RCW 80.04.080, RCW 80.24.010, and WAC 480-120-382 or WAC 480-120-385.

- 4 On November 6, 2007, the Commission served on these 12 telecommunications companies a Notice of Impending Revocation of Registration as a Telecommunications Company and Opportunity to Request a Hearing (Notice), informing the companies that their registrations as telecommunications companies would be revoked for failure to submit annual reports or pay regulatory fees in violation of RCW 80.04.080, RCW 80.24.010, WAC 480-120-382, and WAC 480-120-385.
- 5 The Commission served the Notice upon the 12 companies listed in Attachment A to that Notice by regular and certified mail. The Notice was sent to the address on file with the Commission for each of the companies. The certified mailing included a request for a return receipt to show delivery was complete.
- 6 The Notice offered each company the opportunity to respond by coming into compliance or requesting a hearing within 30 days following service of the Notice. The Notice informed the companies that they would be considered in compliance by submitting the delinquent annual reports and regulatory fees within 30 days of service, by December 6, 2007.

II. COMPANY RESPONSES TO NOTICE

- 7 Two of the 12 companies, Global Grid Telecom, Inc. and Who's Calling, Inc., submitted their delinquent annual report and paid their delinquent regulatory fee after the Notice was issued. No company requested a hearing.

III. DISCUSSION AND DECISION

- 8 Both Global Grid Telecom, Inc., and Who's Calling, Inc. are in compliance with the regulatory requirements by filing their annual reports and paying their regulatory fee. These companies will retain their registrations as telecommunications companies.

- 9 The remaining 10 companies, listed in Appendix 1 to this Order, failed to respond to the Notice, either by coming into compliance or requesting a hearing for mitigation or concerning the validity of the allegations of violations. As a result, the Commission finds that the 10 companies failed to file the required reports concerning their operations in Washington State or to pay regulatory fees. The Commission revokes the registrations of those companies pursuant to the Notice and WAC 480-121-060. A list of the companies whose registrations as telecommunications companies are revoked is attached as Appendix 1 to this Order.

IV. FINDINGS OF FACT

- 10 Having discussed above all matters material to our decision, and having stated our general findings, the Commission now makes the following summary findings of fact. Those portions of the preceding discussion that include findings pertaining to the ultimate facts of the Commission are incorporated by this reference.
- 11 (1) The Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates, rules, regulations, practices, and accounts of public service companies, including telecommunications companies.
- 12 (2) On November 6, 2007, the Commission served a Notice of revocation to the 12 telecommunications companies listed in Attachment A to that Notice.
- 13 (3) The telecommunications companies listed in Attachment A to the November 6, 2007, Notice are telecommunications companies subject to Commission jurisdiction.
- 14 (4) Global Grid Telecom, Inc., and Who's Calling, Inc., responded to the Notice and have complied with requirements to file annual reports and pay regulatory fees.
- 15 (5) The remaining ten telecommunications companies listed in Appendix 1 to this Order failed to timely file an annual report, pay regulatory fees, or request a

hearing to challenge revocation of their registration to conduct business as telecommunications companies under the laws of the State of Washington.

V. CONCLUSIONS OF LAW

- 16 Having discussed in detail all matters material to this decision, and having stated
general conclusions, the Commission now makes the following summary conclusions
of law. Those portions of the preceding discussion that state conclusions pertaining to
the ultimate decisions of the Commission are incorporated by this reference.
- 17 (1) The Commission has jurisdiction over the subject matter of and the parties to
this proceeding. *RCW 80.01.040; RCW 80.36; WAC 480-120; WAC 480-121.*
- 18 (2) The telecommunications companies listed in Appendix 1 to this Order are
public service companies and are registered with the Commission as
telecommunications companies. *See RCW 80.04.010; RCW 80.36; WAC 480-
121.*
- 19 (3) The companies listed in Appendix 1 to this Order failed to file in 2007 an
annual report setting forth company operations during the year 2006, and
failed to pay regulatory fees as required by RCW 80.04.080, RCW 80.24.080,
and WAC 480-120-382, and WAC 480-120-385.
- 20 (4) The Commission has authority to revoke a company's registration as a
telecommunications company for good cause after notice and opportunity for a
hearing. *WAC 480-121-060.*
- 21 (5) The Commission should revoke the registrations of the 10 companies listed in
Appendix 1 to this Order for failure to file annual reports and pay regulatory
fees, in violation of RCW 80.04.080, RCW 80.24.010, WAC 480-120-382 and
WAC 480-120-385.

VI. ORDER

THE COMMISSION ORDERS:

- 22 (1) The registrations of the 10 telecommunications companies listed in Appendix
 1 to this Order are revoked.
- 23 (2) The Commission retains jurisdiction of the subject matter and the parties to
 effectuate the provisions of this Order.

DATED at Olympia, Washington, and effective December 21, 2007.

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.

APPENDIX 1

**TELECOMMUNICATIONS COMPANIES DELINQUENT IN FILING 2006
ANNUAL REPORTS AND PAYING 2007 REGULATORY FEES**

COMPANY NAME
ACCXX Communications, LLC
Association Administrators, Inc.
Buehner-Fry, Inc.
Custom Switching Technologies, Inc.
Integrated Voice Services, Inc.
Net One International, Inc.
OCMC, Inc.
Preferred Carrier Services, Inc.
Telcentrex, LLC
Winstar Communications, LLC

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION**
Harrisburg, PA. 17105-3265

Public Meeting held January 24, 2008

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Tyrone J. Christy
Kim Pizzingrilli

Pennsylvania Public Utility Commission
Law Bureau Prosecutory Staff

C-20078215

v.

Winstar of Pennsylvania, LLC,
(2003.0034.00)

A-311171

DEFAULT ORDER

BY THE COMMISSION:

On September 6, 2007, the Law Bureau Prosecutory Staff ("Prosecutory Staff") filed a formal complaint against Winstar of Pennsylvania, LLC ("Winstar" or "Respondent") at Docket No. C-20078215. Respondent was issued a certificate of public convenience by the Commission on April 1, 2002 to operate in Pennsylvania as a facilities based interexchange toll carrier (IXC) as authorized by our order at A-311171, as a competitive local exchange carrier (CLEC) as authorized by our order at A-311171F0002; and as a competitive access carrier (CAP) as authorized by our order at A-311171F0003.

In the complaint, Prosecutory Staff alleged that Respondent is delinquent in paying its monthly Pennsylvania Universal Service Fund ("USF") assessments pursuant to 52 Pa. Code §§ 63.161-63.171 and 66 Pa. C.S. §§ 3001-3009, and has failed to file the Telecommunications Relay Service Annual Access Line Summary Report and Annual Tracking Report (hereinafter collectively referred to as "TRS Reports") for 2005 in violation of Section 504 of the Public Utility Code, 66 Pa.C.S. § 504. The complaint requested that the Commission order respondent to file the TRS Reports and pay \$11,021.85 to the USF. In addition, the complaint requested that the Commission impose a civil penalty of \$1,000 for each violation alleged herein, and for each day's continuance of such violation, and/or cancel Winstar's certificate of public convenience.

According to the U.S. Postal Service return receipt, the complaint was served on September 10, 2007. To date, more than 20 days later, no answer has been filed to the complaint. Moreover the TRS Reports have not been filed and nor has the USF assessment total of \$11,021.85 plus late fees been paid. As of November 30, 2007, the unpaid USF assessment total was \$12,401.69. In addition, we are not aware that Respondent has any current local service customers in Pennsylvania, and Respondent no longer is assigned any NXX codes.

Winstar's total failure of response is absolutely unacceptable and will not be tolerated. By way of this order we reiterate that we will not hesitate to invoke our authority under the Public Utility Code to ensure timely compliance with our regulations and orders including the ordering of such other remedies as the Commission may deem appropriate. *See* 66 Pa. C.S. §§ 504, 505, 506 and 3301. Based on Respondent's failure to file an answer to the complaint and the TRS Reports, as well as its failure to pay its outstanding monthly USF assessments and late charges, we conclude that revocation of Winstar's certificate of public convenience is in the public interest. Furthermore, the Commission may take other

appropriate action, including the imposition of penalties under Section 3301, in lieu of cancellation, if Respondent seeks relief from this order; **THEREFORE;**

IT IS ORDERED:

1. That the allegations in the Prosecutory Staff's complaint are deemed admitted and the complaint sustained.
2. That Winstar of Pennsylvania, LLC is hereby required to file its 2005 TRS Reports and pay its outstanding USF assessment total of \$12,401.69 plus late fees.
3. That the Secretary serve a copy of this tentative Default Order upon Winstar of Pennsylvania, LLC, Verizon Pennsylvania Inc. and Verizon-North Inc., the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff, and the Attorney General's Bureau of Consumer Protection, and also cause a copy of this tentative Default Order to be published in the *Pennsylvania Bulletin* with a 20-day comment period.
4. That absent the filing of a written response within the 20-day comment period, this Default Order shall become final without further order of this Commission.
5. That Winstar of Pennsylvania, LLC shall immediately cease acquiring any new customers and, within 10 days of the entry date of this order, provide written notice to any existing customers directing each to select an alternative service provider within 30 days of the date of the notice. Such notice must include a statement of the Commission's intent to cancel the company's certificate of public convenience absent adverse public comment within the 20-day time constraint established pursuant to Ordering Paragraph No. 3, above.

6. That absent the filing of adverse public comment, 30 days after publication in the *Pennsylvania Bulletin* and without further action by the Commission, the certificates of public convenience held by Winstar of Pennsylvania, LLC at A-311171, A-311171 F0002, and A-311171F0003 shall be cancelled, and the company's name stricken from all active utility lists maintained by the Tariff and Annual Report Section of the Commission's Bureau of Fixed Utility Services and the Assessment Section of the Bureau of Administrative Services.

BY THE COMMISSION

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: January 24, 2008

ORDER ENTERED: January 28, 2008

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Compliance investigation of AAV	DOCKET NO. 070347-TA
certificate holders for apparent third-time	ORDER NO. PSC-07-0546-PAA-TA
violation of Rule 25-4.0161, F.A.C.,	ISSUED: June 29, 2007
Regulatory Assessment Fees;	
Telecommunications Companies.	

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

NOTICE OF PROPOSED AGENCY ACTION ORDER IMPOSING PENALTIES AND
COLLECTION COSTS, AND REQUIRING PAYMENT OF DELINQUENT REGULATORY
ASSESSMENT FEES, OR CANCELLING AAV CERTIFICATE FOR VIOLATION OF RULE
25-4.0161, FLORIDA ADMINISTRATIVE CODE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Pursuant to Rule 25-4.0161(10), Florida Administrative Code, telecommunications companies that fail to pay the Regulatory Assessment Fee, including statutory late payment charges, within 15 days after receiving a delinquent notice, shall be automatically penalized \$500 for a first offense, \$1,000 for a second offense, and \$2,000 for a third offense. The penalty amounts include collection costs. If an entity fails to pay the Regulatory Assessment Fee in full, including statutory late payment charges, along with the penalty amount, that entity's certificate shall be cancelled.

Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee if the certificate was active during any portion of the calendar year. Pursuant to Rule 25-4.0161(2), Florida Administrative Code, the form and applicable fees are due to the Florida Public Service Commission by January 30 of the subsequent year. Pursuant to Section 350.113(4), Florida Statutes, the Regulatory Assessment Fee return forms, for the period of January 1 through December 31, are mailed to entities at least 45 days prior to the date that payment of the fee is due.

DOCUMENT NUMBER-DATE

05170 JUN 29 5

Attachment 3
FPSC-COMMISSION CLERK

The Division of Administrative Services advised our staff that Winstar Communications, LLC, Company Code TA065, failed to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code. In addition, Winstar Communications, LLC has had two prior dockets for the same rule violation. In Docket No. 030614-TA, the company paid the past due Regulatory Assessment Fees, including statutory late payment charges, and a \$100 settlement and in Docket No. 060468-TA, the company paid the \$1,000 penalty and past due fees to resolve its dockets.

Accordingly, we hereby find it appropriate to cancel Winstar Communications, LLC's AAV certificate for failure to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, unless Winstar Communications, LLC pays a penalty and cost of collection, together totaling \$2,000, and remits any past due Regulatory Assessment Fees, along with accrued statutory late payment charges, to the Florida Public Service Commission.

If this Order is not protested, Winstar Communications, LLC's AAV certificate shall be cancelled. If Winstar Communications, LLC pays the penalty and cost of collection, together totaling \$2,000, and remits any past due Regulatory Assessment Fees, along with accrued statutory late payment charges, prior to the expiration of the Proposed Agency Action Order, then Winstar Communications, LLC's AAV certificate will remain active. If Winstar Communications, LLC fails to protest the Order or pay the penalty and cost of collection, together totaling \$2,000, and fails to remit any past due Regulatory Assessment Fees, along with accrued statutory late payment charges, prior to the expiration of the Proposed Agency Action Order, then Winstar Communications, LLC's AAV certificate should be cancelled administratively, and the collection of the past due Regulatory Assessment Fees should be referred to the Florida Department of Financial Services for further collection efforts. If Winstar Communications, LLC's AAV certificate is cancelled in accordance with this Commission's Order, that company should be required to immediately cease and desist providing alternative access vendor service in Florida. This docket should be closed administratively either upon receipt of the payment of the penalty and cost of collection, together totaling \$2,000, and any past due Regulatory Assessment Fees, along with accrued statutory late payment charges, or upon cancellation of Winstar Communications, LLC's AAV certificate. If Winstar Communications, LLC's AAV certificate is cancelled in accordance with this Order and it subsequently decides to reapply for a certificate as an alternative access vendor company, Winstar Communications, LLC shall be required to first pay the penalty and cost of collection, together totaling \$2,000 and any outstanding fees, including accrued statutory late payment charges. We are vested with jurisdiction over these matters pursuant to Sections 350.113, 364.336, 364.337, and 364.285, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Winstar Communications, LLC shall pay a penalty and cost of collection, together totaling \$2,000, and any past due Regulatory Assessment Fees, including statutory late payment charges, to the Florida Public Service Commission for failure to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, by the end of the protest period. The cost of collection will be subtracted from any monies collected as payment (full or partial) of the penalty and cost of collection, and will be deposited, along with the past due Regulatory Assessment Fees, in the Florida Public Service Regulatory Trust Fund, pursuant to Section 350.113, Florida Statutes. The statutory late payment charges and any portion of the penalty exceeding the cost of collection will be remitted to the Florida Department of Financial Services for deposit in the State of Florida General Revenue Fund, pursuant to Section 364.285(1), Florida Statutes. It is further

ORDERED that should Winstar Communications, LLC fail to comply with this Order, that entity's certificate shall be cancelled. It is further

ORDERED that the cancellation of the certificate in no way diminishes Winstar Communications, LLC's obligation to pay applicable delinquent Regulatory Assessment Fees, and accrued statutory late payment charges. If Winstar Communications, LLC has its certificate cancelled, and subsequently decides to reapply for certification as an alternative access vendor company, that company shall be required to first pay any outstanding penalties and cost of collection and fees, including accrued statutory late payment charges. Any unpaid Regulatory Assessment Fees, and accrued statutory late payment charges, shall be referred to the Florida Department of Financial Services for further collection efforts. It is further

ORDERED that if Winstar Communications, LLC's certificate is cancelled in accordance with this Order, that entity shall immediately cease and desist providing alternative access vendor service in Florida. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed upon receipt of the imposed penalty and cost of collection, together totaling \$2,000, and Regulatory Assessment Fees, including statutory late payment charges, or upon cancellation of Winstar Communications, LLC's AAV certificate.

ORDER NO. PSC-07-0546-PAA-TA
DOCKET NO. 070347-TA
PAGE 4

By ORDER of the Florida Public Service Commission this 29th day of June, 2007.



ANN COLE
Commission Clerk

(S E A L)

VM

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 20, 2007.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.