

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-1230
of WinStar Wireless of Nebraska,)
Inc., of Tyson's Corner, Virginia)
seeking authority to obtain a Cert-) GRANTED
ificate of Public Convenience and)
Necessity to provide interLATA and)
intraLATA interexchange and private)
line services in Nebraska.) Entered: December 19, 1995

APPEARANCES:

For the Applicant

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Swidler & Berlin
3000 K Street, N.W. Suite 300
Washington, DC. 20007-5116

Ralph A. Peluso
WinStar Wireless
7799 Leesburg Pike, Suite 410 South
Tyson's Corner, VA 22043

For the Communications Department

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P.O. Box 94927
Lincoln, Nebraska 68508

PRELIMINARY MATTERS

WinStar Wireless of Nebraska, Inc. (hereinafter referred to as WinStar) of Tyson's Corner, Virginia filed an application with the Commission on August 31, 1995. The company seeks authority to conduct business as an intrastate telecommunications common carrier offering resold intraLATA and interLATA long distance service and private lines services. The applicant's business address is noted above. Notice of the application appeared in the Omaha Daily Record, September 6, 1995.

A Petition of Formal Intervention was filed by the Nebraska Telephone Association (NTA) on October 6, 1995. Subsequently, WinStar amended its application to clarify the nature of the application, as well as to make an adjustment limiting the geographic scope of the proposed service area. After the amended application was filed, the NTA withdrew its Petition of Formal Intervention. WinStar appeared before the Commission for a video-conference hearing, chaired by Commissioner Rod Johnson, November 21, 1995 in the Commission Library, Lincoln, Nebraska.

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O P I N I O N A N D F I N D I N G S

Upon consideration of the application, the governing statutes and rules¹, the evidence adduced at the November 21, 1995 hearing, and being fully informed, the Commission is of the opinion and finds:

Nebraska was divided into three Local Access Transport Areas ("LATAs") as a result of the terms of the Modification of Final Judgement (the "MFJ") issued in the AT&T divestiture case. United States v. American Telephone & Telegraph Co., F.Supp. 131 (D.D.C. 1982), aff'd sub nom., California v. United States, 460 U.S. 1001 (1983) and United States v. American Telephone & Telegraph Co., 569 F.Supp. 990 (D.D.C. 1983) aff'd sub nom., California v. United States, 460 U.S. 1001 (1983).

While Neb. Rev. Stat. 75-604, by its language, refers to local exchange service, the Nebraska Supreme Court in Northwestern Bell Telephone v. Consolidated Telephone Co., 180 Neb. 268, 142 N.W.2d 324 (1966) held that long distance service is also subject to the provisions of the statute. This was recognized by the Legislature in LB 835 (LAWS 1986) because interexchange services (which include resellers) in Sec. 86-805 (part of LB 835) are referenced to in Sec. 75-604. For this reason, the Commission distinguishes between intraLATA and interLATA resale when deciding reseller applications.

Ralph Peluso, Chief Financial Officer for the applicant, testified. Mr. Peluso stated, and the pleadings reflect, the applicant seeks both intraLATA and interLATA authority, as well as authority to provide private lines services.

WinStar Wireless of Nebraska is a wholly-owned subsidiary of WinStar Wireless, Inc., which in turn is a wholly-owned subsidiary of WinStar Communications, Inc., (WCI) a publicly-traded company whose stock is traded over the NASDAQ market system. WCI and its affiliates specialize in the development and provision of telecommunications services throughout the United States.

The applicant is operating in over 40 metropolitan areas, encompassing 27 states. No state has denied WinStar Wireless a

¹Interexchange reseller application are governed by Neb. Rev. Stats. 75-604 and 86-805 (Cum. Supp. 1994 and 1994 Reissue, respectively) and Title 291 Neb. Admin. Regs. Ch. 5, Rule 003.12.

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certificate of authority and no formal complaints have been filed against the company.

The company offers wireless technology on an interstate and intrastate basis. WinStar intends to provide non-switched (dedicated) intraLATA and interLATA private line telecommunications services over its microwave network. WinStar does not seek authority to provide local exchange service. The application requests authority to operate only within the North 402 (Omaha) LATA and the 308 LATA.

Billing for services will be compiled in-house and the company offers customer service assistance, 24 hours a day, through an 800 number.

The company markets its products through direct contacts, as well as through system agents. The company also serves other competitive access providers (CAPs) that wish to expand their network.

Financial information was provided to the Commission in the application. The statements reflect the parent is financially sound. Mr. Peluso stated the applicant is a start-up company; but, intends to become profitable by the end of 1997.

The proposed tariff, which is part of the application, is in accordance with the Commission's Rules and Regulations. The tariff states that company may collect advance payments and deposits if deemed necessary. This Commission requires that deposits shall bear simple interest at the minimum rate of seven percent (7%) per annum. (See Rule 002.19.) Accordingly, the applicant must follow this and all other regulations governing credit and deposits.

In conclusion, Mr. Peluso testified that WinStar offers excellent services at competitive rates and will enhance the telecommunications industry within the state of Nebraska.

Based on the testimony, the exhibits, and the proposed tariff, the applicant has provided the requisite information, has demonstrated its financial resources, and has proven to be technically competent to provide service. The application is fair and reasonable, is in the public interest, and should be granted.

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O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-1230 be, and it is hereby, granted and WinStar Wireless of Nebraska, Inc. of Tyson's Corner, Virginia is hereby authorized to operate as a **resale carrier of intrastate interexchange intraLATA and interLATA telecommunications services, as well as private line services within the state of Nebraska.**


IT IS FURTHER ORDERED that the applicant shall file, in accordance with the applicable statutes on or before April 30th of each year, an annual report with this Commission consisting of (a) a copy of any report filed with the Federal Communications Commission, (b) a copy of any annual report to stockholders, (c) a copy of the latest Form 10-K filed with the Securities and Exchange Commission, (d) balance sheet and income statement for the previous year of operation and (e) for the State of Nebraska on a combined interstate-intrastate basis, the investment in telephone plant and equipment located within the state, accumulated depreciation thereon, operating revenues, operating expenses, and taxes.

IT IS FURTHER ORDERED that applicant file an updated tariff prior to offering service pursuant to the certificate granted in this order.

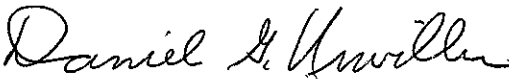
IT IS FINALLY ORDERED that this order be, and it is hereby made the Commission's official certificate of authority to furnish the service authorized herein as a common carrier.

MADE AND ENTERED at Lincoln, Nebraska this 19th day of December, 1995.

COMMISSIONERS CONCURRING:


//s//Rod Johnson
//s//Frank E. Landis
//s//James F. Munnelly
//s//Daniel G. Urwiller

NEBRASKA PUBLIC SERVICE COMMISSION


Chairman

ATTEST:


Executive Director