

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) Application No. C-1309
Winstar Gateway Network, Inc. of)
Irving, Texas, seeking authority to) GRANTED
operate as a resale common carrier)
of telecommunications services)
within the state of Nebraska.) Entered: August 20, 1996

APPEARANCES:

For the Applicant

For the Communications Department

Peter LaRose, President
5221 N. O'Conner Blvd, Suite 850
Irving, Texas 75039

Deonne Bruning/Chris A. Post
300 The Atrium, 1200 N Street
P.O. Box 94927
Lincoln, Nebraska 68508

PRELIMINARY MATTERS

Winstar Gateway Network, Inc. (hereinafter referred to as Winstar) of Irving, Texas filed an application with the Commission on March 15, 1996. The company seeks authority to obtain a Certificate of Public Convenience and Necessity to operate as a reseller of interexchange telecommunications services within the State of Nebraska. The applicant's business address is noted above. Notice of the application appeared in the Omaha Daily Record, March 19, 1996. Winstar appeared before the Commission for a public hearing, chaired by Commissioner Rod Johnson, May 14, 1996 in the Commission Hearing Room, Lincoln, Nebraska.

BY THE COMMISSION

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 rules (1), the evidence adduced at the May 14, 1996 hearing, and being fully informed, the Commission is of the opinion and finds:

(1) Interexchange reseller applications 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.

Application No. C-1309

PAGE TWO

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.

Mr. Peter LaRose of Winstar, testified. Mr. LaRose stated, and the pleadings reflect, the applicant seeks both intraLATA and interLATA authority. The application does not seek authority to provide Alternate Operator Services (AOS). Winstar incorporated in the state of Delaware on May 18, 1992. The applicant is a privately-held corporation.

The applicant has received authority to operate in approximately thirty-nine (39) states and has applications pending in several others. Windstar has had formal complaints filed against them for lack of compliance. However, Windstar is now committed to operating within regulatory guidelines. Furthermore, Windstar has hired a new individual that will be solely responsible for compliance. No state has denied Winstar a certificate of authority.

Winstar will use MCI as its underlying carrier. Winstar proposes to offer 1+, 800 services and calling card services. Winstar's services are provided to both residential and business customers.

The applicant follows FCC rules and regulations and has a policy against slamming. A written LOA is required before a change in provider is initiated.

The applicant provides a toll-free 800 number for customer service, twenty-four hours a day, seven days a week. The customer service toll-free number is displayed on Winstar's bill.

Application No. C-1309

PAGE THREE

Financial information was provided to the Commission in the application. The statements reflect the company is capable of offering service within the state.

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.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-1309 be, and it is hereby, granted and Winstar Gateway Network, Inc., of Irving, Texas is hereby authorized to operate as a **resale carrier of intrastate interexchange intraLATA and interLATA telecommunications 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 statements 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.

Application No. C-1309

PAGE FOUR

MADE AND ENTERED at Lincoln, Nebraska this 20th day of August, 1996.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



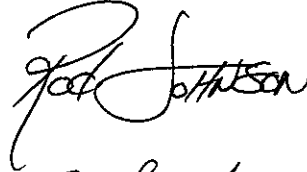
//s//Rod Johnson

//s//Frank E. Landis

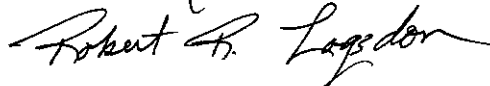
//s//James F. Munnelly

//s//Daniel G. Urwiller

Chairman



ATTEST:



Executive Director