

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of WinStar Communica-) Application C-1770
tions, Inc. and WinStar Wireless of)
Nebraska, Inc., both of New York, New)
York, seeking Nunc Pro Tunc approval) Granted
of a transfer of assets from MIDCOM)
Communications, Inc. to WinStar Wire-)
less of Nebraska, Inc.) Entered: April 7, 1998

BY THE COMMISSION:

On March 4, 1998, WinStar Communications, Inc. (WinStar) and WinStar Wireless of Nebraska, Inc. (WinStar Nebraska), both of New York, New York, jointly filed an application requesting approval nunc pro tunc of a transfer of assets from MIDCOM Communications, Inc. (MIDCOM) to WinStar Nebraska. Notice of the application was published in The Daily Record, March 6, 1998. No protests were filed; therefore, we process this application pursuant to the Commission's Rule of Modified Procedure.

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

WinStar is a Delaware corporation headquartered in New York, New York. It is the ultimate corporate parent of the WinStar family of companies, which includes WinStar Nebraska. WinStar Nebraska received a certificate of public convenience and necessity to provide intrastate interexchange telecommunications services in Nebraska on December 19, 1995, in Application No. C-1230. MIDCOM is a Washington corporation certificated to provide resold intrastate interexchange telecommunications services in Nebraska in Docket C-924. As a result of a bankruptcy proceeding described below, MIDCOM is no longer a corporate entity and therefore is not a party to this application.

Applicants filed this application for Commission approval of a transfer of assets that has already occurred pursuant to the Chapter 11 bankruptcy proceedings of MIDCOM. In compliance with the terms of a January 7, 1998, order of the United States Bankruptcy Court of the Eastern District of Michigan (the Court), substantially all of MIDCOM's business assets were transferred to WinStar MIDCOM Acquisition Corp., a wholly-owned subsidiary of WinStar. Simultaneously, MIDCOM's physical assets were transferred to WinStar Wireless, Inc., another wholly-owned subsidiary of WinStar. In addition, the customer accounts were simultaneously transferred to WinStar's operating subsidiary in each state. In Nebraska, those customer accounts were transferred to WinStar Nebraska. Thus, MIDCOM's Nebraska customers will be served by WinStar Nebraska.

"Nunc pro tunc" means "now for then." The purpose of an order nunc pro tunc is to correct the record which has been made so that it will truly record the action taken which, through inadvertence or mistake, was not truly recorded, Interstate Printing Co. v. Dept. of Revenue, 236 Neb. 110, 459 N.W.2d 519 (1990). In this instance, the applicants were unable to seek Commission approval of the assets transfer prior to action being taken by the Court. This application is the applicants' good faith effort to clarify the record and seek Commission approval of the transaction retroactively.

After examining the record and being fully advised, the Commission finds that the transfer of assets from MIDCOM to WinStar Wireless of Nebraska, Inc. should be approved. Therefore, the Commission should issue an order nunc pro tunc granting the application and revoking MIDCOM's certificate in Nebraska.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application C-1770 be, and it is hereby, granted.

IT IS FURTHER ORDERED that the Certificate of Public Convenience and Necessity previously issued to MIDCOM Communications, Inc. in Application No. C-924 be, and it is hereby, revoked.

MADE AND ENTERED in Lincoln, Nebraska, on this 7th day of April, 1998.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Anne C. Boyle

//s//Lowell C. Johnson

//s//Frank E. Landis

//s//Daniel G. Urwiller

Lowell C. Johnson
Chairman

ATTEST:

Robert B. Landon
Executive Director