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Decision 95-11-045 November 21, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

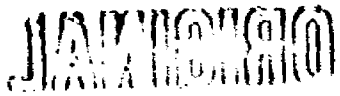
In the Matter of the Application of: (1) WinStar Wireless Communications, Inc. (WinStar) and (2) Avant-Garde Telecommunications of California, Inc. (AGT) for a Certificate of Public Convenience and Necessity to Provide InterLATA Telecommunications Services and IntraLATA Services Within All LATAs in the State of California to the extent authorized by the Commission in 87-11-033.

O P I N I O N

With the filing of an additional supplement in late August, AGT of California advised the Commission that the Commission approved the merger June 26, 1995. Further, that as a result of the merger, it has formally changed its name to WinStar Wireless (AGT of California or applicant), a Delaware corporation qualified to do business in California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code Section 1001 to permit it to resell interLATA and intraLATA telephone services in California under the name WinStar Wireless of California, Inc. Applicant also seeks exemption from the requirements of PU Code §§ 816-830, dealing with the issuance of stocks and other evidences of ownership and bonds, notes, and other evidences of indebtedness, and PU Code §§ 851-855. In its application, AGT of California disclosed that discussions were underway that might change its ultimate ownership. When filed, AGT of California was a wholly owned subsidiary of Avant-Garde Telecommunications, Inc. (AGT). The stock of AGT, equivalent (as described in D.91-10-041, Appendix A, Paragraph 2.1)

1 California is divided into ten Local Access and Transport Areas (LATAs) of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes services, revenues, and functions that relate to telecommunications originating in one LATA and terminating in another. "IntraLATA" describes services, revenues, and functions that relate to telecommunications originating and terminating within a single LATA.

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 applicant's parent, was held by three shareholders: WinStar
 Wireless, Inc. (49%), a wholly-owned subsidiary of WinStar
 Communications, Inc. (WinStar); Leo I. George (31%); and the
 Larry D. Hudson Trust (20%). Late in April 1995, AGT of California, by
 letter, informed the Commission that WinStar and AGT entered into a
 definitive merger agreement that will allow WinStar, through a
 subsidiary, to acquire 100% of AGT, subject to Federal
 Communications Commission (FCC) approval. With FCC approval,
 WinStar will become the ultimate parent of the applicant, AGT of
 California.

With the filing of an additional supplement in late
 August, AGT of California advised the Commission that the FCC
 approved the merger June 26, 1995. Further, that as a result of
 the merger, it has formally changed its name to WinStar Wireless of
 California, Inc. (WinStar-California). AGT of California intends
 to operate within the state under this new name, and asks that the
 CPCN be granted to WinStar-California.

By Decision (D.) 84-01-037 (14 CPUC2d 317 (1984)) and
 later decisions we authorized interLATA entry generally. However,
 we limited the authority conferred to interLATA service, and we
 subjected the applicants to the condition that they not hold
 themselves out to the public to provide intralATA service. By
 D.94-09-065, we authorized competitive intralATA services effective
 January 1, 1995, for carriers meeting specified criteria.

The Commission has established two major criteria for
 determining whether a CPCN should be granted. The applicant must
 demonstrate that it has a minimum of \$100,000 of cash or cash
 equivalent (as described in D.91-10-041, Appendix A, Paragraph 5.1
 (41 CPUC2d 505 at 519)), reasonably liquid and readily available to
 meet the firm's start-up expenses, such applicants shall also
 document any deposits required by local exchange companies or
 interexchange carriers (IECs), and demonstrate that they have
 additional resources to cover all such deposits. Any applicant who
 can demonstrate that \$100,000 of cash is not needed for its first

year of operation, may be granted a CPCN with a lesser amount, based on the sufficiency requirements set forth in Ordering Paragraph 1.a of D.91-10-041. In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business. (D.90-08-032, 37 CPUC2d (130, at 147-48, 156, 158).)

As part of its application, AGT of California provided the consolidated balance sheet of WinStar and subsidiaries. Through the supplement filed in August, AGT of California provided a written guaranty. It states that WinStar guarantees WinStar-California access to a total of \$100,000 for a 12 month period following the granting of the instant CPCN. The balance sheet demonstrates that WinStar has more than \$100,000, consisting of cash and cash equivalent. It satisfies our criteria for being reasonably liquid and readily available to meet the applicant's needs.

Applicant has, through a supplement, provided information on its key officers and directors indicating their experience. Three people will manage the operations of the company. Their information can be summarized as follows:

David Ackerman, President of AGT of California's successor, WinStar-California, brings over 21 years of telecommunications experience, much of which is directly applicable to the development and construction of wireless networks. Ackerman established and operated cellular, mobile and paging operations in more than 52 markets. Previously, Ackerman was Senior Vice President of Mobile Telecommunication Technologies (Mtel), from 1982 through 1991. Ackerman held senior management positions at MCI Communications in the areas of new business development, corporate development, product and systems planning, network systems and national accounts engineering. He has also held various senior management positions for GTE Air Signal, Rochester Telephone Company and New York Telephone in operations, planning, development, finance and marketing.

Timothy R. Graham is Vice President and Secretary of WinStar California, Inc. From October 1991 through September 1994, Graham served as the President and Corporation Secretary of the primary real estate subsidiary of National Capital Management Corporation, a company engaged through its subsidiaries in real estate rental, industrial manufacturing, and insurance matters. Graham has also practiced law as an independent lawyer and has been active in venture capital and merchant banking activities. He has lectured and authored a number of publications in the area of securities law. He is a director of a telecommunications equipment manufacturing company and a capital management corporation.

Ralph A. Peluso will serve as Chief Financial Officer, Treasurer and Assistant Secretary of WinStar California. He has been involved in the telecommunications industry for many years. As the Director of Financial Reporting and Accounting for MCI from 1973 to 1980, he was responsible for all SEC, FCC reporting and the development of accounting policies and procedures, as well as financial analysis. From 1980 to 1994, Peluso was the Controller for MCI International. As Controller for the \$500 million subsidiary, he managed a 100-person finance organization and was a member of the management transition team after the acquisition of Western Union International. Until 1989, Peluso was the Vice President of Finance and Business Development at MCI Midwest Division. From 1989 to 1994, Peluso was the President and Chief Executive Officer of Progressive Communications Technologies, which specialized in telecommunications network design, support, and analysis. Peluso was educated at the undergraduate level at Hunter College and at the graduate level at Bernard Baruch College.

The numerous other officers and board members whose experience is outlined in the application state expertise in financial services, interactive media, entertainment, consumer goods, import, personal

hygiene product manufacture, real estate sales, and management, joint accounting, and publishing.

We will authorize the interLATA and intralATA services that applicant seeks to provide. Findings of Fact

1. Applicant served a copy of the application upon 160 telephone corporations with which it is likely to compete.

2. A notice of the filing of the application appeared in the Daily Calendar on March 30, 1995. No protests have been filed.

3. A hearing is not required.

4. By prior Commission decisions, we authorized competition in providing interLATA telecommunications service but generally barred those offering such service from holding out to the public the provision of intralATA service.

5. By D.94-09-065, we authorized competitive intralATA services effective January 1, 1995, for carriers meeting specified criteria.

6. Applicant has demonstrated that it has a minimum of \$100,000 of cash and cash equivalent, reasonably liquid and readily available to meet its start-up expenses.

7. Applicant's technical experience consists of three officers and directors with a substantial combined experience in the start-up, operation and management of telecommunications companies and other service industries.

8. Applicant has submitted with its application, supplemented with updated information, a complete draft of applicant's initial tariff which complies with the requirements established by the Commission including prohibitions on unreasonable deposit requirements.

9. Applicant has represented that no one associated with or employed by applicant was previously associated with a nondominant

interexchange carrier that filed for bankruptcy or went out of business.

11. Since no facilities are to be constructed, it can be seen with certainty that the proposed operation will not have any significant effect upon the environment.

12. The Commission has routinely granted nondominant interexchange carriers, such as applicant, an exemption from Rule 18(b) where no construction is involved to the extent that the rule requires applicant to serve a copy of its application on cities and counties in the proposed service area and to the extent that it requires applicant to provide a conformed copy of all exhibits attached to applicant's filed application to potential competitors.

13. Exemption from the provisions of PU Code §§ 816-830 has been granted to other resellers (See, e.g., D.88-10-007 and D.88-12-076).

14. As the result of a merger which occurred after the filing of this application, AGT of California has changed its name to WinStar Wireless of California, Inc. Applicant intends to do business in California under this new name.

Conclusions of Law

1. Applicant has the financial ability to provide the proposed service.

2. Applicant has made a reasonable showing of technical expertise in telecommunications.

3. Public convenience and necessity require the interLATA and intraLATA services to be offered by applicant.

4. Applicant is subject to the following conditions:

a. The current 3.70% surcharge applicable to all intrastate services except for those excluded by D.94-09-065 to fund Universal Lifeline Telephone Service (PU Code § 8.79; D.94-09-065).

b. The current 0.3% surcharge applicable to all intrastate services except for those

California Relay Service and Communications
 Devices Fund (PU Code § 2881; D.94-09-065)

c. The user fee provided in PU Code
 §§ 431-435, which is 0.1% of gross
 intrastate revenue for the 1995-1996 fiscal
 year (Resolution 4778), and

The current 0.5% surcharge applicable to
 all intrastate services except for those
 excluded by D.94-09-065 to fund the
 California High Cost Fund (PU Codes
 § 739.30; D.94-09-065).

5. Applicant should be exempted from Rule 18(b) requirement of service of the application on cities and counties in the proposed service area and service of all exhibits attached to this application on potential competitors.
6. The application should be granted to the extent set forth below.

7. Because of the public interest in competitive interLATA and intraLATA services, the following order should be effective immediately.

8. Although the application was filed by Avant-Garde Telecommunications of California, Inc., applicant has changed its name. The authority requested should therefore be granted to the applicant under its new name, Winstar Wireless of California, Inc.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Winstar Wireless of California, Inc. (applicant) to operate as a reseller of the interLocal Access and Transport Area (LATA) and, to the extent authorized by Decision (D.) 94-09-065, intraLocal Access and Transport Area (LATA) telecommunication services offered by communication common carriers in California.

2. Applicant shall file a written acceptance of the certificate granted in this proceeding, along with a copy of its certificate of qualification to transact business under its new name certified by the California Secretary of State.

3. Applicant is authorized to file with this Commission tariff schedules for the provision of interLATA and intraLATA service. Applicant may not offer interLATA and/or intraLATA service until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI, and shall be effective not less than 1 day after filing.

4. Applicant is a non-dominant interexchange carrier (NDIEC). The effectiveness of its future tariffs is subject to the schedules set forth in Ordering Paragraph 15 of D.90-08-0327 as modified by D.91-12-013 and D.92-06-034.

5. All NDIECs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:

a. Inclusion of FCC approved rates for interstate services in California public utilities tariff schedules shall become effective on one (1) day's notice.

b. Uniform rate reductions for existing services shall become effective on five (5) days' notice.

c. Uniform rate increases, except for minor rate increases, for existing services shall become effective on thirty (30) days' notice, and shall require bill inserts, a message on the bill itself, or first class mail notice to customers of the pending increased rates.

d. Uniform minor rate increases, as defined in D.90-11-029 for existing

services shall become effective on not less than 5 working days' notice. Customer notifications is not required for such minor rate increases.

Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days' notice.

f. Advice letter filings merely revising the text or location of text material which do not cause an increase in any rate or charge shall become effective on not less than five (5) days' notice.

4. Applicant may deviate from the following provisions of GO 96-A-11 (a) paragraph II.C.(1) (b) which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and (b) paragraph II.C.(4), which requires that "a separate sheet or series of sheets should be used for each rule." Tariff filings incorporating these deviations shall be subject to the approval of the Commission Advisory and Compliance Division (CACD) in the Telecommunications Branch. Tariff filings shall reflect all fees and surcharges to which applicant is subject, as reflected in Conclusion of Law 40p 96-08. Applicant shall comply with 40p 96-08 in 5. Applicant shall file as part of its initial tariff, after the effective date of this order and consistent with Ordering Paragraph 3, a service area map.

6. Applicant shall notify this Commission in writing of the date interLATA service is first rendered to the public within 5 days after service begins and again within 5 days of when intralATA service begins and to the extent that the rule that the applicant proposes to operate in and to the extent that the rule that the applicant proposes to serve a copy of its application on the cities and

7. Applicant shall keep its books and records in accordance with the Uniform System of Accounts specified in Title 47, Code of Federal Regulations, Part 32.101 hereinafter referred to as "USAC".

8. In the event the books and records of the applicant are required for inspection by the Commission or its staff, applicant shall either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to applicant's office.

9. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis using the information request form developed by the CACD Auditing and Compliance Branch and contained in Attachment A.

10. Applicant shall ensure that its employees comply with the provisions of PU Code § 2889.5 regarding solicitation of customers.

11. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months after the effective date of this order.

12. The corporate identification number assigned to applicant is U-5531-C which shall be included in the caption of all original filings with this Commission and in the titles of other pleadings filed in existing cases.

13. Within 60 days of the effective date of this order, applicant shall comply with PU Code § 708, Employee Identification Cards, and notify the Chief of CACD's Telecommunications Branch in writing of its compliance.

14. Applicant is exempted from the provisions of PU Code §§ 816-830.

15. In response to the applicant's request for waiver, applicant is exempted from Rule 18(b) of the Commission's rules of Practice and Procedure to the extent that the rule requires applicant to serve a copy of its application on the cities and counties it proposes to operate in and to the extent that the rule

requires applicant to serve a copy of all exhibits attached to its application on potential competitors.

16. If applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 4, CACD shall prepare for Commission consideration a resolution that revokes the applicant's certificate of public convenience and necessity, unless the applicants have received the written permission of CACD to file or remit late.

17. The application is granted, as set forth above.
This order is effective today.

Dated November 21, 1995, at San Francisco, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

A.95-03-026 ALJ/BAR/sid

TO: ALL INTEREXCHANGE TELEPHONE UTILITIES

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for the California interexchange telephone utilities. However, you are hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

California Public Utilities Commission
Auditing and Compliance Branch, Room 3251
505 Van Ness Avenue
San Francisco, CA 94102-3298

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

If you have any question concerning this matter, please call (415) 703-1961.

ATTACHMENT A

Information Requested of California Interexchange Telephone Utilities.

To be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3251, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).

If incorporated, specify:

- a. Date of filing articles of incorporation with the Secretary of State.
 - b. State in which incorporated.
6. Commission decision number granting operating authority and the date of that decision.
 7. Date operations were begun.
 8. Description of other business activities in which the utility is engaged.
 9. A list of all affiliated companies and their relationship to the utility. State if affiliate is a:
 - a. Regulated public utility.
 - b. Publicly held corporation.
 10. Balance sheet as of December 31st of the year for which information is submitted.
 11. Income statement for California operations for the calendar year for which information is submitted.

(END OF ATTACHMENT A)