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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 4th
day of August, 1998.

In the Matter of the Application for Approval)
Nunc Pro Tunc of a Transfer of Assets from) Case No. TM-98-385
MIDCOM Communications, Inc., to WinStar)
Wireless of Missouri, Inc.)
)

ORDER APPROVING TRANSFER OF ASSETS

WinStar Communications, Inc. (WinStar) and WinStar Wireless of Missouri, Inc. (WinStar Wireless) filed an Application for Approval Nunc Pro Tunc of Transfer of Assets on March 10, 1998, asking the Commission to approve the transfer of the assets of MIDCOM Communications, Inc. (MIDCOM) to WinStar. An amendment to this Application was filed on March 10 to add two paragraphs inadvertently left out of the original application. WinStar and MIDCOM are both certificated to provide telecommunications services in Missouri, and therefore this transaction comes under Commission jurisdiction.

WinStar is a Delaware corporation with its principal offices located at 230 Park Avenue, Suite 3126, New York, New York 10169. WinStar is the ultimate parent corporation of several companies, including WinStar Wireless, and operates as a facilities-based and resale provider of wireless private line and switched local and interexchange services throughout the United States. WinStar Wireless has been authorized by the Commission to provide telecommunications services in

Missouri under the name Avant-Garde Telecommunications of Missouri pursuant to an order dated April 26, 1995 in Case No. TA-95-268.

MIDCOM is a Washington corporation with its principal place of business located at 26899 Northwestern Highway, Suite 120, Southfield, Michigan 48034. MIDCOM is a resale provider of intrastate interexchange telecommunications services in Missouri, pursuant to a Commission order issued August 28, 1991 in Case No. TA-91-379.

On November 7, 1997, MIDCOM filed petitions with the U.S. Bankruptcy Court seeking the protection of Chapter 11 of the U.S. Bankruptcy Code. As a part of the bankruptcy proceedings, on December 11, MIDCOM and WinStar entered into an Asset Purchase Agreement by which WinStar tentatively agreed to purchase substantially all of the assets of MIDCOM related to MIDCOM's telecommunications business for approximately \$97 million. On January 7, 1998, the Bankruptcy Court approved the Asset Purchase Agreement authorizing the sale of the majority of MIDCOM's assets to WinStar. The Bankruptcy Court ordered the closing of the asset purchase to occur as soon as possible to preserve the value of MIDCOM's business as a going concern. In accordance with this court order, on January 21, WinStar and MIDCOM completed the transfer of assets. Following the transfer, WinStar Acquisition, a subsidiary of WinStar, held MIDCOM's former assets. These assets, including customer accounts, were then transferred to the appropriate WinStar subsidiary providing telecommunications services in any given state, specifically WinStar Wireless in Missouri. The parties filed their Application for Approval *Nunc Pro Tunc* of Transfer of Assets on March 10.

The applicants stated that the transfer was accomplished in a seamless fashion which did not and will not adversely affect services to MIDCOM's former customers. WinStar requested the Commission allow them to grant any former MIDCOM customer the right to continue to receive the same services at the same rates they are currently receiving under their agreements with MIDCOM should the customer so desire. WinStar also stated it would provide notice of to all former MIDCOM customers in the form of a bill insert within 30 days of the filing of their application with the Commission.

WinStar states that the transfer is in the public interest because it will enable WinStar to compete more effectively in the telecommunications marketplace, which will lead to the availability of more products and services. WinStar also indicated their acquisition of MIDCOM's assets in an expedient manner allowed WinStar to avoid any unnecessary interruption in telecommunications services to MIDCOM's former customers in Missouri. WinStar states that the transfer of assets will have no impact on the tax revenues of any political subdivision in which WinStar and MIDCOM have structures, facilities, or equipment. WinStar also states that there are no pending or final judgments or decisions against it from any state or federal agency which involve customer service or rates.

The Staff of the Commission (Staff) filed a Memorandum on April 22, recommending that the transaction be approved. Staff stated that the transfer did not adversely affect the provision of telecommunications services to the former MIDCOM customers. Staff indicated WinStar had provided notice to all former MIDCOM customers on March 5 informing them that MIDCOM was now part of WinStar Wireless and that they

had been transferred to WinStar Wireless at rates that were the same or lower than those they had received from MIDCOM.

The Commission has reviewed the application and Staff's recommendation, and determines that the transfer of assets will have no adverse impact on the Missouri customers of WinStar or MIDCOM. The Commission also determines that the transfer of assets will increase the Applicant's efficiency and will benefit Missouri customers. Therefore, the Commission determines that the transaction is not detrimental to the public interest and should be approved.

The Commission has also reviewed the parties request that approval of the transaction be granted "*Nunc Pro Tunc*" or retroactive to the date of the transfer, January 21. This retroactive approval is not allowed under 392.300, RSMo 1994, the law governing Commission approval of transfers related to telecommunications companies. This statute states that a valid transfer by a telecommunications company cannot occur unless the company has "first secured from the commission an order authorizing" the transfer. This language clearly allows for only prospective approval since, by being required "first," the Commission's order approving the transfer must be granted before the transfer is treated as authorized by the Commission. For this reason, a transfer can only be treated as approved prospectively from the date of the Commission's authorization of the transfer.

IT IS THEREFORE ORDERED:

1. That the application filed by WinStar Communications, Inc. and WinStar Wireless of Missouri, Inc. on March 10, 1998, as amended, is approved in accordance with this order.

2. That the transfer of assets authorized by the U.S. Bankruptcy Court by MIDCOM Communications, Inc. to WinStar Communications, Inc. and WinStar Wireless of Missouri, Inc. is approved prospectively from the date of this order.

3. That the parties are authorized to take any and all remaining actions necessary to effect the transfer authorized by this order.

4. That this order shall become effective on August 14, 1998.

BY THE COMMISSION

A handwritten signature in cursive script that reads "Dale Hardy Roberts".

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Murray
and Schemenauer, CC., concur.
Crumpton, C., absent.

Harper, Regulatory Law Judge

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COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION