

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

COMMUNICATIONS GATEWAY NETWORK, INC.)
a/k/a WINSTAR GATEWAY NETWORK, INC. AND)
WINSTAR COMMUNICATIONS, INC.)

CASE NO. 96-181

_____)
ALLEGED VIOLATIONS OF KRS 278.020(4) AND)
(5), KRS 278.030, KRS 278.260, AND COMMISSION)
REGULATION 807 KAR 5:011(3))

O R D E R

On October 2, 1992, Communications Gateway Network, Inc. ("Communications Gateway") filed an application with the Commission seeking authority to provide intrastate long-distance telecommunications service as a reseller within the Commonwealth of Kentucky. The matter was docketed as Case No. 92-426.¹ The information Communications Gateway provided in its application did not inform the Commission that WinStar Communications, Inc. ("WinStar Communications")² had, on or about May 21, 1992, obtained an option to acquire controlling interest in

¹ Case No. 92-426, Communications Gateway Network, Inc. Application for Authorization to Provide Intrastate Telecommunications Resale Services.

² WinStar Communications is a publicly-traded holding company whose stock is traded over the NASDAQ market system. It is a Delaware corporation having its principal place of business at 230 Park Avenue, 31st Floor, New York, New York 10169.

Communications Gateway. However, it did demonstrate Communications Gateway's financial, managerial, and technical capability to provide service.

On January 15, 1993, Communications Gateway was granted the authority it sought. It is a utility under the jurisdiction of the Commission. As such, Communications Gateway has a duty to comply with Chapter 278 of the Kentucky Revised Statutes and the regulations promulgated thereunder. Notwithstanding this fact, it appears that Communications Gateway has violated KRS 278.020(4) and (5), KRS 278.030 and KRS 278.260(1), and Commission Regulation 807 KAR 5:011(3).

On April 25, 1996, the Commission received the application of WinStar Gateway Network, Inc. which notified the Commission that WinStar Communications exercised its 1992 option and acquired controlling interest in Communications Gateway in 1993.³ The Commission was also notified that Communications Gateway's name had been changed to WinStar Gateway Network, Inc. ("WinStar Gateway").⁴ WinStar Gateway's application seeks Commission approval "nunc pro tunc, to the extent necessary," for the transfer of control and name change.

However, WinStar Communications and WinStar Gateway were required to obtain Commission approval prior to the transfer. KRS 278.020(4) states, inter alia, that:

³ WinStar Gateway states that by March 10, 1993, pursuant to its option, WinStar Communications had purchased 51% of the outstanding shares of common stock in Communications Gateway. The remaining 49% was purchased on August 8, 1993 (See WinStar Gateway's April 25, 1996 Application at 3).

⁴ WinStar Gateway states that it is a wholly-owned subsidiary of WinStar Communications. It further states that it "previously operated under the name Communications Gateway Network, Inc." (See WinStar Gateway's April 25, 1996 Application at 1).

No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission . . . without prior approval by the commission. [Emphasis added.]

KRS 278.020(5) states that no one shall acquire control, either directly or indirectly, of any utility furnishing service in Kentucky without prior Commission approval.⁵

WinStar Gateway was informally advised that a prima facie showing had been made that the transfer of control violated KRS 278.020(4) and (5).⁶ Subsequently, its attorney filed a letter with the Commission on June 27, 1996, stating that WinStar Gateway desires to resolve all issues presented in that matter by making a voluntary payment of \$500 to the Kentucky State Treasurer. Since that time, however, additional information has been presented to the Commission which indicates that WinStar Gateway may have violated other provisions of KRS Chapter 278, and Commission Regulation 807 KAR 5:011(3).

In January of 1996, Commission Staff received several informal complaints against WinStar Gateway. Most of the complainants alleged that their long-distance telephone service had been switched from their carrier of choice to WinStar Gateway

⁵ In Administrative Case No. 359, Exemptions for Interexchange Carriers, Long-Distance Resellers, Operator Service Providers and Customer-Owned, Coin-Operated Telephones, Order dated June 21, 1996, and effective August 1, 1996, the Commission exempted long-distance telecommunication carriers from the statutory requirement that transfers receive prior Commission approval. However, the transaction at issue here predates Administrative Case No. 359 by approximately three years.

⁶ In telephone conversations on or about June 17, 1996, counsel for WinStar Gateway and Commission Staff counsel informally discussed the transfer.

without appropriate customer authorization, an unreasonable act commonly referred to as "slamming."⁷

On January 2, 1996, Commission Staff, pursuant to KRS 278.260(1) opened an informal investigation into WinStar Gateway's practices. During the investigation, which ended in August of 1996, Commission Staff received no fewer than 101 informal complaints against WinStar Gateway. At that time, WinStar Gateway also filed with the Commission a tariff that did not comply with the requirements of Commission Regulation 807 KAR 5:011(3). Its tariff is now properly filed with the Commission and it appears that WinStar Gateway has satisfactorily resolved the informal complaints. However, the Commission does not believe that it discharged its duty to this Commonwealth by allowing WinStar Gateway to informally settle the numerous and egregious charges that, in so short a time, have been made against it. Full, complete, and formal investigation is therefore necessary.

The Commission, being sufficiently advised, finds that a prima facie showing has been made that Communications Gateway/WinStar Gateway and WinStar Communications have violated KRS 278.020(4) and (5), as well as KRS 278.030 and KRS 278.260(1), which require utilities to furnish reasonable service, and Commission Regulation 807 KAR 5:011(3). The Commission therefore finds that Communications Gateway/WinStar Gateway and WinStar Communications should appear before this

⁷ In Case No. 95-399, Sevada Vowels/United Mortgage Co., Complainant v. Midcom Communications, Inc., Defendant, Order dated March 26, 1996, the Commission found that the provision of unauthorized service constitutes an unreasonable act.

Commission to show cause why they should not be subject to penalties pursuant to KRS 278.990 for the alleged violations. Further, Communications Gateway/WinStar Gateway should be required to provide supporting documentation for all actions that have been taken to correct the violations and to prevent future ones.

WinStar Gateway's June 27, 1996 settlement offer does not resolve all issues raised in this proceeding. For this reason, the Commission finds that its settlement offer should be rejected.

Finally, due to the nature of the allegations made against WinStar Communications and the other issues raised in this proceeding, the Commission finds that the application of WinStar Wireless of Kentucky, Inc. ("WinStar Wireless"), another affiliate of WinStar Communications, seeking authority to provide telecommunications services in Kentucky, should be held in abeyance pending resolution of this case. WinStar Wireless' application is docketed as Case No. 96-249.⁸

IT IS THEREFORE ORDERED that:

1. WinStar Gateway's June 27, 1996 settlement offer is hereby rejected, and Case No. 96-249 is held in abeyance pending resolution of all issues raised in this proceeding.

2. Communications Gateway/WinStar Gateway and WinStar Communications shall appear before the Commission on Wednesday, December 18, 1996 at 10:00 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel

⁸ Case No. 96-249, The Application of WinStar Wireless of Kentucky, Inc. for a Certificate of Public Convenience and Necessity to Provide InterLATA and IntraLATA Private Line Services Throughout the State of Kentucky.

Lane, Frankfort, Kentucky, for the purpose of presenting evidence concerning the alleged violations of KRS 278.020(4) and (5), KRS 278.030 and KRS 278.260(1) and Commission Regulation 807 KAR 5:011(3), and of showing cause why Communications Gateway/WinStar Gateway should not be subject to the penalties prescribed in KRS 278.990(1) for the alleged violations.

3. Within 30 days of the date of this Order, Communications Gateway/WinStar Gateway shall file with the Commission a verified statement by one of its officers notifying the Commission of all corrective actions taken on the issues raised in this proceeding. The statement shall include a detailed explanation of the steps that the parties have taken to reach full compliance with Commission rules and regulations and to prevent future violations. The statement shall also include the name, address, telephone number, and fax number of the contact person responsible for the regulatory matters raised in this proceeding.

4. Communications Gateway/WinStar Gateway shall provide a detailed description of its practices regarding customer subscription and the method it uses to avoid slamming practices, including a detailed description of the manner in which Communications Gateway/WinStar Gateway satisfies the requirements of Commission Regulation 807 KAR 5:062. A copy of the regulation is attached hereto and incorporated herein as Attachment A.

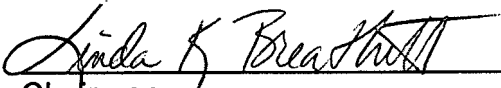
5. Any motion requesting an informal conference with Commission Staff to consider the issues or any other matters which may aid in the disposition of this

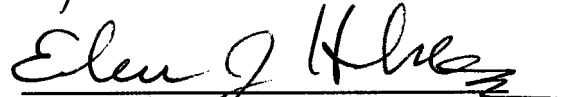
proceeding shall be filed with the Commission no later than 20 days from the date of this Order.

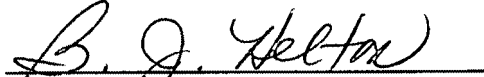
6. A copy of this Order shall be sent to each person who has complained to the Commission regarding the alleged "slamming" practices, together with a notice that the complainant may, at his option, request intervention or appear as a witness at the hearing scheduled herein.

Done at Frankfort, Kentucky, this 28th day of October, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

ATTACHMENT A

AN ATTACHMENT TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 96-181 DATED OCTOBER 28, 1996

PUBLIC PROTECTION AND REGULATION CABINET
Public Service Commission
(New Administrative Regulation)

807 KAR 5:062. Changing primary interexchange carrier;
verification procedures

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.040(3), KRS 278.280(2)

NECESSITY AND FUNCTION: KRS 278.040(3) provides that the commission may adopt reasonable regulations to implement the provisions of KRS Chapter 278. KRS 278.280(2) provides that the commission shall prescribe rules for performing any service or furnishing any commodity of the character furnished or supplied by any utility. This regulation establishes procedures by which customer-ordered changes of presubscribed long distance telecommunications carriers shall be confirmed.

Section 1. Definitions. For purposes of this regulation:

(1) "Interexchange carrier" (IXC) means a provider of long distance telecommunications services. Facilities-based carriers of long distance service, resellers of long distance service, and local exchange carriers providing long distance service are included in this definition.

(2) "Letter of agency" means a customer's written statement that authorizes a primary interexchange carrier change and bears the customer's signature.

(3) "Local exchange carrier" means a provider of switched telecommunications service that carries calls originating and terminating within the local calling area.

(4) "Long distance telecommunications service" means service that carries calls to exchanges that are not within the local calling area of the originating number.

(5) "PIC freeze order" means an order submitted by a customer stating he does not want his PIC to be changed until further notice.

(6) "Primary interexchange carrier" (PIC) means a carrier to which a customer has presubscribed for long distance service.

(7) "Two-PIC system" means a system which enables a customer to presubscribe to one primary interexchange carrier for interLATA (long haul) long distance service and to another for intraLATA (short haul) long distance service.

Section 2. Verification procedures. No IXC shall submit to a local exchange carrier a PIC change order unless the customer's authorization to change his PIC has been confirmed by one of the three procedures prescribed in this regulation.

(1) The IXC has obtained a letter of agency from the customer that:

(a) authorizes the change;

(b) demonstrates that the customer understands what occurs when a PIC is changed;

(c) states the customer's billing name and address and each telephone number to be covered by the PIC change order;

(d) demonstrates that the customer understands the PIC change fee; and

(e) if the PIC change order applies to a number in an area with a Two-PIC system, clearly states whether the customer has authorized the change of his intraLATA PIC, his interLATA PIC, or both; or

(2) The IXC has obtained the customer's electronic authorization, placed from a telephone number on which the customer's PIC is to be changed, to submit a PIC change order. The electronic authorization shall include the information described in subsection (1)(a) through (e) of this section. IXCs electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. A call to the number(s) will connect a customer to a voice response unit, or similar mechanism, that records the required information and automatically records the originating number; or

(3) An appropriately qualified and independent third party operating in a location physically separate from the IXC's telemarketing representative has obtained the customer's electronic

authorization to submit the PIC change order. The electronic authorization shall include the information described in subsection (1)(a) through (e) of this section and appropriate verification data such as the customer's date of birth or social security number.

Section 3. Prohibition of Additional LEC Verification. A local exchange carrier shall not seek independent verification of PIC changes properly submitted to it by IXCs unless the customer whose PIC is to be changed has previously submitted to the local exchange carrier a PIC freeze order that has not been revoked. Nothing in this regulation shall be construed to impose upon a local exchange carrier a duty to verify a PIC change it did not solicit or to change a PIC that is the subject of a PIC freeze order until the customer has, by notice given directly to the LEC, revoked the PIC freeze order.

Section 4. Records to be Retained. All written and electronic evidence of PIC change orders shall be retained by the soliciting carrier for one year after the date the PIC has been changed.

Section 5. Letters of agency. (1) Letters of agency shall be separate or severable from inducements or promotions of any kind, except as provided in subsection (2) of this section.

(2) A letter of agency may be combined with a check which states in bold-face type on its front and near the signature line

on its back that the customer is authorizing a long distance carrier change by signing the check. A letter of agency check shall contain only the information prescribed in section 2, subsection 1 of this regulation and the language necessary to make the check a negotiable instrument.

(eff. 7-19-96)