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**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

CP 1030

CP 631

In the Matter of the Application of WINSTAR	)	
COMMUNICATIONS, LLC and WINSTAR	)	
WIRELESS, INC. to Transfer authority to	)	ORDER
Provide Telecommunications Service in Oregon	)	
and Classification as a Competitive Provider.	)	
	)	

DISPOSITION: CP 1030, APPLICATION GRANTED; and  
CP 631, ORDER NO. 99-422, CERTIFICATE OF  
AUTHORITY TRANSFERRED.

**Note:** By issuing this certificate, the Commission makes no endorsement or certification regarding the certificate holder's rates or service.

**The Application**

On January 29, 2002, Winstar Communications, LLC (New Winstar) and Winstar Wireless, Inc. (Old Winstar), filed with the Commission a joint application to transfer authority to provide telecommunications service in Oregon as a competitive provider. The application requests to transfer the authority of Old Winstar, granted in docket CP 631 by Order No. 99-422, to New Winstar. The application is in accordance with Oregon Administrative Rule 860-0032-0005(11) - (13).

Winstar Wireless, Inc. (Old Winstar) is the transferor. Winstar Communications LLC (New Winstar) is the transferee. New Winstar will be referred to as Applicant. Both entities together will be referred to as Joint Applicants.

Old Winstar is currently authorized to provide intraexchange (local exchange) switched service (i.e., local dial tone), and non-switched, private line service (dedicated transmission service) in all exchanges of the telecommunications utilities listed in Appendix A to this order.

Old Winstar is also authorized to provide interexchange switched service (toll) and private line service (dedicated transmission service) statewide in Oregon. *See* Order No. 99-422, docket CP 631. These current authorities will be transferred to New Winstar upon issuance of this order. All terms and conditions will also be transferred to New Winstar. Upon granting this transfer of certificate of authority, Old Winstar will no longer have any authority to provide telecommunications service in Oregon and must cease providing service in Oregon.

Old Winstar formerly used the following names in Oregon: Winstar Wireless of Oregon, Inc. and Winstar Wireless, Inc. New Winstar was recently formed by IDT Corporation as part of a transaction in which IDT Corporation's indirect subsidiary, Winstar Holdings, LLC, is acquiring the core domestic telecommunications assets of Winstar Communications, Inc. after Old Winstar and certain of its affiliates filed for bankruptcy on April 18, 2001.

Applicant, Winstar Communications, LLC, is a recently formed Delaware limited liability company and is a subsidiary of Winstar Holdings, LLC. Winstar Holdings, LLC is owned by IDT Advanced Communication Services, LLC, a wholly owned subsidiary of IDT Corporation. IDT Corporation is the ultimate parent company of IDT America, Inc. IDT America, Inc. is authorized to provide interexchange telecommunications services in Oregon. *See* Order No. 98-462, Docket CP 539, dated November 10, 1998. This order does not effect the authority granted to IDT America, Inc.

The Joint Applicants propose to transfer the authority of Old Winstar to provide intraexchange (local exchange) switched service (i.e., local dial tone), and non-switched, private line service (dedicated transmission service) within all exchanges of the telecommunications utilities listed in Appendix A to this order, to New Winstar. New Winstar will operate as a reseller as well as a facilities-based provider of local exchange service. New Winstar may also purchase unbundled network elements, as well as finished services for resale, from other certified carriers for intraexchange service.

The Joint Applicants also propose to transfer Old Winstar's authority to provide interexchange switched service (toll) and private line service (dedicated transmission service) in Oregon to New Winstar. New Winstar will operate as a reseller as well as a facilities-based provider of interexchange service. Applicant may also purchase unbundled network elements, as well as finished services for resale, from other certified carriers for interexchange service.

Operator services are part of switched telecommunications service. New Winstar may directly provide operator services as defined in OAR 860-032-0001. New Winstar will not be an "operator service provider" as defined in ORS 759.690(1)(d). Commission rule OAR 860-032-0007 and Oregon statute ORS 759.690 establish conditions regarding provision of operator services.

The Commission served notice of the application on the Commission's telecommunications mailing list on February 12, 2002. The Commission did not receive any protests or requests to be made parties of the proceeding.

On March 13, 2002, an Administrative Law Judge (ALJ) with the Commission issued a ruling that adopted procedures for processing this docket. The ALJ set a procedural schedule. On March 20, 2002, the Commission Staff (Staff) distributed a proposed order for review by the parties. On March 27, 2002, Applicant filed a letter stating that its has no exceptions to the proposed order and that it waives the remainder of the time allotted to parties for review of the proposed order so that the final order could be expeditiously issued.

The Commission has reviewed the proposed order and the record in this matter. Based on a preponderance of the evidence, the Commission makes the following:

## FINDINGS AND CONCLUSIONS

### Applicable Law

Oregon Administrative Rules specific to the transfer of certificates of authority are included in OAR chapter 860, division 032 at 860-032-0005 (11), (12), (13).

Applications to provide telecommunications service and for classification as a competitive telecommunications services provider are filed pursuant to ORS 759.020. ORS 759.020 provides that:

(1) No person [or] corporation \* \* \* shall provide intrastate telecommunications service on a for-hire basis without a certificate of authority issued by the Public Utility Commission under this section.

\* \* \* \* \*

(5) The commission may classify a successful applicant for a certificate as a telecommunications utility or as a competitive telecommunications services provider. If the commission finds that a successful applicant for a certificate has demonstrated that services it offers are subject to competition or that its customers or those proposed to become customers have reasonably available alternatives, the commission shall classify the applicant as a competitive telecommunications services provider. \* \* \* For purposes of this section, in determining whether telecommunications services are subject to competition or whether there are reasonably available alternatives, the commission shall consider:

(a) The extent to which services are available from alternative providers in the relevant market.

(b) The extent to which services of alternative providers are functionally equivalent or substitutable at comparable rates, terms, and conditions.

- (c) Existing economic or regulatory barriers to entry.
- (d) Any other factors deemed relevant by the commission.

Applications to provide local exchange (intraexchange) telecommunications service are reviewed pursuant to ORS 759.050, the “competitive zone law.” Under ORS 759.050(2)(a), the Commission may:

Certify one or more persons, including another telecommunications utility, to provide local exchange telecommunications service within the local exchange telecommunications service area of a certified telecommunications utility, if the commission determines that such authorization would be in the public interest. For the purpose of determining whether such authorization would be in the public interest, the commission shall consider:

- (A) The effect on rates for local exchange telecommunications service customers both within and outside the competitive zone.
- (B) The effect on competition in the local exchange telecommunications service area.
- (C) The effect on access by customers to high quality innovative telecommunications service in the local exchange telecommunications service area.
- (D) Any other facts the commission considers relevant.

Under ORS 759.050(2)(b), the Commission shall:

Upon certification of a telecommunications provider under paragraph (a) of this subsection, establish a competitive zone defined by the services to be provided by the telecommunications provider and the geographic area to be served by the telecommunications provider.

Under ORS 759.050(2)(c), the Commission may:

Impose reasonable conditions upon the authority of [the applicant] to provide competitive zone service within the competitive zone \* \* \* at the time of certification of a telecommunications provider, or thereafter.

Subsection (5)(a) of ORS 759.050 provides that:

Unless the commission determines that it is not in the public interest at the time a competitive zone is created, upon designation of a competitive zone, price changes,

service variations, and modifications of competitive zone services offered by a telecommunications utility in the zone shall not be subject to ORS 759.180 to ORS 759.190 [notice, hearing and tariff suspension procedures], and at the telecommunications utility's discretion, such changes may be made effective upon filing with the commission.

OAR 860-032-0015(1) authorizes the Commission to suspend or cancel the certificate if the Commission finds that (a) the holder made misrepresentations when it filed the application, or (b) the applicant fails to comply with the terms and conditions of the certificate.

### **Designation as a Competitive Provider**

New Winstar, the Applicant, has met the requirements for classification as a competitive telecommunications service provider. The Joint Applicants have met the requirements to transfer authority to provide telecommunications service in Oregon. New Winstar's customers or those proposed to become customers have reasonably available alternatives. The incumbent telecommunications utilities, listed in Appendix A provide the same or similar local exchange service in the local service area requested by Applicant. AT&T, WorldCom, Sprint Communications, Qwest Corporation (Qwest), Verizon Northwest Inc. (Verizon), and others provide interexchange telecommunications service in the service area requested by Applicant. Subscribers to Applicant's services can buy comparable services at comparable rates from other vendors. Economic and regulatory barriers to entry are relatively low.

### **Conditions of the Certificate**

There are several conditions listed in the application. Oregon Administrative Rules relating to certificates of authority are generally included in OAR chapter 860, division 032. Conditions applicable to certificate holders include, but are not limited to the following: OAR 860-032-0007, 860-032-0008, 860-032-0011, 860-032-0012, 860-032-0013, 860-032-0015, 860-032-0045, 860-032-0060, 860-032-0090, and 860-032-0095. The conditions listed in the application and those contained in Oregon Administrative Rules are adopted and made conditions of this certificate of authority. A condition of this certificate of authority is that Applicant shall comply with applicable laws, Commission rules, and Commission orders related to provision of telecommunications service in Oregon.

The Commission first applied the competitive zone law, ORS 759.050, in dockets CP 1, CP 14, and CP 15. After full evidentiary hearings and consideration of the public interest criteria set forth in ORS 759.050(2)(a), the Commission designated three competitive providers of switched local exchange services as alternate exchange carriers or competitive local exchange carriers (CLECs) in the Portland metropolitan area. *See* Order No. 96-021. The Commission subsequently applied those findings and conclusions to dockets CP 132, CP 139, and CP 149,

and certified two CLECs to provide switched local exchange service in areas located throughout the state.

The Commission takes official notice of the record in dockets CP 1, CP 14, and CP 15.<sup>1</sup> In Order No. 96-021, the Commission established conditions applicable to CLEC certificates. Since Applicant proposes to offer local exchange service, it seeks certification as a CLEC. Pursuant to ORS 759.050(2)(c) and Order No. 96-021, Applicant as a CLEC shall comply with the following conditions:

1. Applicant shall terminate all intrastate traffic originating on the networks of other telecommunications utilities, competitive providers, and cooperative corporations that have been issued a certificate of authority by the Commission.
2. Whenever Applicant terminates intrastate long distance traffic directly or indirectly from interexchange carriers or from its own toll network to its end user customers, Applicant shall contribute to the Oregon Customer Access Fund (OCAF), or its equivalent, in accordance with provisions of the Oregon Customer Access Plan (OCAP) or any successor plan approved by the Commission. Applicant shall contribute using rates approved by the Commission on intrastate terminating carrier common line access minutes, or on any other basis determined by the Commission. Applicant may not participate in (i.e., receive money from) pooling arrangements established under the OCAP or any successor plan unless authorized by the Commission.
3. Applicant shall comply with the Oregon Exchange Carrier Association's (OECA) informational and operational needs as specified by the OCAP or any successor plan approved by the Commission.
4. Applicant shall offer E-911 service. Applicant has primary responsibility to work with the E-911 agencies to make certain that all users of its services have access to the emergency system. Applicant will deliver or arrange to have delivered to the correct 911 Controlling Office its customers' voice and dialable Automatic Number Identification (ANI) telephone numbers so the lead 911 telecommunications service provider can deliver the 911 call to the correct Public Safety Answering Point (PSAP). Applicant shall work with each 911 district and lead 911 telecommunications service provider to develop database comparison procedures to match Applicant's customer addresses to the 911 district's Master Street Address Guide in order to obtain the correct Emergency Service Number (ESN) for each address. Applicant shall provide

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<sup>1</sup> Under OAR 860-014-0050(2), a party may object to facts noticed within 15 days of notification that official notice has been taken. The objecting party may explain or rebut the noticed facts.

the lead 911 telecommunications service provider with daily updates of new customers, moves, and changes with the correct ESN for each.

5. Applicant shall not take any action that impairs the ability of other certified telecommunications utilities, competitive providers, or cooperative corporations to meet service standards specified by the Commission.
6. At the request of the Commission, Applicant shall conduct and submit to the Commission traffic studies regarding traffic exchanged with telecommunications service providers and other entities designated by the Commission.
7. For purposes of distinguishing between local and toll calling, applicant shall adhere to local exchange boundaries and Extended Area Service (EAS) routes established by the Commission. Applicant shall not establish an EAS route from a given local exchange beyond the EAS area for that exchange.
8. When Applicant is assigned one or more NXX codes, Applicant shall limit each of its NXX codes to a single local exchange or rate center, whichever is larger, and shall establish a toll rate center in each exchange or rate center proximate to that established by the telecommunications utility or cooperative corporation serving the exchange or rate center.
9. Applicant shall comply with universal service requirements as determined by the Commission.
10. Any obligation regarding interconnection between Applicant and the telecommunications utilities listed in the Appendices to this order shall be governed by provisions of the Telecommunications Act of 1996 (the Act), including but not limited to sections 251 and 252 of the Act (47 USC §§ 251 and 252), as well as the applicable rules and regulations of the Federal Communications Commission and this Commission implementing the Act. Order No. 96-021 will govern the interconnection obligations between such parties for the provision of switched local services, unless otherwise addressed by an interconnection agreement or the Commission modifies the principles established in Order No. 96-021.
11. If Applicant provides services to a subscriber who, in turn, resells the services, including operator services, then Applicant and the subscriber must comply with ORS 759.690 and OAR 860-032-0007.
12. Applicant shall pay an annual fee to the Commission pursuant to ORS 756.310, 756.320, and 756.350 and OAR 860-032-0008, 860-032-0080, 860-032-0090, and 860-032-0095. By November 1, of each year, the Commission will set the fee level that is to be based on gross retail intrastate revenues for the following calendar year.



The minimum annual fee is \$100. Applicant is required to pay the fee for the preceding calendar year by April 1. New Winstar is liable for the fee incurred by the transferor (Old Winstar) as of the date the transfer is approved, pursuant to OAR 860-032-0005(11)(b).

13. Pursuant to Oregon Laws 1987, chapter 290, sections 2-8, and to OAR chapter 860, division 033, Applicant shall be responsible to ensure that the Residential Service Protection Fund surcharge is remitted to the Commission. This surcharge is assessed against each paying retail subscriber at a rate that is set annually by the Commission.

### **Public Interest**

In Order No. 93-1850, docket UM 381, the Commission considered the public interest aspects of local exchange competition for dedicated transmission service. In dockets CP 1, CP 14, and CP 15, Order No. 96-021, the Commission made several public interest findings regarding local exchange competition in general.

With regard to the general factual conclusions relevant to this proceeding, the Commission adopts the Commission's Findings of Fact and Opinion in docket UM 381, Order No. 93-1850, at pages 4-6, and the Commission's Findings and Decisions in dockets CP 1, CP 14, and CP 15, Order No. 96-021 at pages 6 - 21, entered pursuant to ORS 759.050(2)(a)(A) - (C). The Commission takes official notice of the record in dockets UM 381, CP 1, CP 14, and CP 15.<sup>2</sup>

Based on a review of those findings, as well as information contained in the application, the Commission concludes that it is in the public interest to grant the application of Winstar Communications, LLC (New Winstar), to provide local exchange telecommunications service as a competitive telecommunications provider in exchanges of the telecommunications utilities listed in Appendix A. Further, it is in the public interest to grant the application to provide interexchange service statewide in Oregon.

This finding will have no bearing on any determination the Commission may be called upon to make under sections 251 or 252 of the Act (47 USC § 251, 252) with regard to the telecommunications utilities in this docket.

### **Competitive Zones**

All the exchanges of the telecommunications utilities shown in the appendix to this order are designated competitive zones pursuant to ORS 759.050(2)(b).

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<sup>2</sup> Under OAR 860-014-0050(2), a party may object to facts noticed within 15 days of notification that official notice has been taken. The objecting party may explain or rebut the noticed facts.

## Pricing Flexibility

In Order No. 93-1850, docket UM 381, the Commission granted pricing flexibility for dedicated transmission service at the same time the Commission granted the certificate of authority. Therefore, the telecommunications utilities listed in Appendix A are granted pricing flexibility for dedicated transmission service in their respective exchanges by this order.

With regard to the general factual conclusions relevant to this proceeding and intraexchange, switched telecommunications service, the Commission adopts the Commission's Findings and Decisions in dockets CP 1, CP 14, and CP 15, Order No. 96-021 at pages 82 and 83, entered pursuant to ORS 759.050(5)(a) to (d). The telecommunications utilities listed in Appendix A will gain pricing flexibility for intraexchange, switched service on an exchange-by-exchange basis under ORS 759.050(5) if:

1. Applicant, or an authorized CLEC, has received a certificate of authority to provide local exchange service;
2. The telecommunications utility files a tariff that satisfies the Commission's requirements regarding the provision of interim number portability, as set forth in Order No. 96-021, and the Commission approves the tariff; and
3. Staff notifies the Commission that a mutual exchange of traffic exists between the telecommunications utility and an authorized CLEC, including but not limited to, Applicant. If Staff previously provided the required notice regarding an exchange, no additional notice is required for that exchange.

(a) As used in paragraph 3 above, "mutual exchange of traffic" means a mutual exchange of traffic between the telecommunications utility and the CLEC within the telecommunications utility's exchange.

(b) As used in paragraph 3 above, for a CLEC who is a reseller (i.e., a CLEC does not use its own lines or switches to provide the particular service at issue), a "mutual exchange of traffic" exists when the CLEC orders and receives one service, at a wholesale rate, from the telecommunications utility for resale pursuant to a certificate granted under ORS 759.050.

Qwest Corporation has satisfied requirement No. 2, above. *See* Order No. 96-277, docket UT 130. Verizon Northwest Inc. has satisfied requirement No. 2, above. *See* Order No. 96-278, docket UT 129.

**ORDER**

IT IS ORDERED that:

1. The joint application from Winstar Communications, LLC and Winstar Wireless, Inc. to transfer the authority granted by Order No. 99-422, docket CP 631, from Winstar Wireless, Inc. to Winstar Communications, LLC is granted. Applicant, Winstar Communications, LLC, is granted authority to provide intraexchange switched service and non-switched dedicated transmission service, and to provide interexchange switched service and non-switched dedicated transmission service, with conditions described in this order.
2. Applicant is designated as a competitive telecommunications provider for intraexchange service in all local exchanges of the telecommunications utilities listed in Appendix A. In addition, Applicant is designated as a competitive telecommunications provider for interexchange service statewide in Oregon.
3. The local exchanges of the telecommunications utilities listed in Appendix A are designated as competitive zones.
4. Any obligation regarding interconnection between Applicant and the telecommunications utilities listed in Appendix A shall be governed by the provisions of the Telecommunications Act of 1996 (the Act), including but not limited to sections 251 and 252 of the Act (47 USC §§ 251 and 252), as well as the applicable rules and regulations of the Federal Communications Commission and this Commission implementing the Act. Order No. 96-021 will govern the interconnection obligations between such parties for the provision of switched local services, unless otherwise addressed by an interconnection agreement or the Commission modifies the principles established in Order No. 96-021.
5. No finding contained in this order shall have any bearing on any determination the Commission may be called upon to make under sections 251 or 252 of the Act (47 USC § 251 or 252) with regard to the telecommunications utilities listed in the appendix to this order.
6. The telecommunications utilities listed in Appendix A shall receive pricing flexibility on an exchange-by-exchange basis as set forth in this order.
7. Pursuant to ORS 759.050(2)(c), Applicant shall comply with Commission imposed universal service requirements as a condition of authority to provide local exchange service.

8. The certificate of authority granted to Winstar Wireless, Inc., by Order No. 99-422 in docket CP 631 is canceled. Winstar Wireless, Inc. no longer has authority to operate in Oregon as a competitive telecommunications provider.

Made, entered, and effective \_\_\_\_\_.

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**John Savage**  
Director  
Utility Program

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561. A request for rehearing or reconsideration must be filed with the commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-014-0095. A copy of any such request must also be served on each party to the proceeding as provided by OAR 860-013-0070(2). A party may appeal this order to a court pursuant to applicable law.

APPENDIX A

CP 1030

EXCHANGES ENCOMPASSED BY THE APPLICATION:

ALL EXCHANGES OF THE TELECOMMUNICATIONS  
UTILITIES LISTED BELOW

**Telecommunications Utilities Not Exempt Pursuant to ORS 759.040**

CenturyTel of Eastern Oregon, Inc.  
CenturyTel of Oregon, Inc.  
Qwest Corporation  
United Telephone Company of the Northwest dba Sprint  
Verizon Northwest Inc.

**Telecommunications Utilities Exempt Pursuant to ORS 759.040**

None

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APPENDIX A  
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