

SWIDLER  
&  
BERLIN  
CHARTERED

April 24, 1996

**VIA OVERNIGHT DELIVERY**

Blanca S. Bayo, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

960531-TI

Re: Application for Approval of Transfer of  
Control of WinStar Gateway Network, Inc.  
(formerly Communications Gateway Network, Inc.)

Dear Ms. Bayo:

Enclosed for filing on behalf of WinStar Gateway Network, Inc. (formerly Communications Gateway Network, Inc.) ("WGN"), please find an original and thirteen (13) copies of WGN's above-referenced Application. Also enclosed is a check in the amount of \$250.00 to cover the filing fee.

Please date-stamp the extra copy of this filing and return it to the undersigned in the enclosed self-addressed, stamped envelope. Should you have any questions concerning this filing, please do not hesitate to contact the undersigned.

Very truly yours,

*Dana Frix*

Dana Frix  
Wendy E. Sheldon

Counsel for  
WinStar Gateway Network, Inc.

Check received with filing and  
forwarded to Fiscal for deposit.  
Fiscal will return a copy of check  
to the undersigned if deposit.

A.J. - [unclear] who forwarded check

Enclosures

cc: Mr. Peter LaRose  
Ms. Dana Hoyle

RECEIVED & FILED  
*[Signature]*  
EPSC-BUREAU OF RECORDS

158840 138

3000 K STREET, N.W. • SUITE 300  
WASHINGTON, D.C. 20007-5116  
(202)424-7500 • TELEX 701131 • FACSIMILE (202)424-7643

DOCUMENT NUMBER: DATE

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EPSC-RECORDS/REPORTING

APR 25 10 25 AM '96  
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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL  
FILE COPY

In re Application of )

WINSTAR GATEWAY NETWORK, INC. )

) Docket No. 960531-TI  
)

**APPLICATION**

WinStar Gateway Network Inc. ("WGN," "Applicant" or "Company") hereby applies for approval *nunc pro tunc*, to the extent necessary, of the acquisition by WinStar Communications, Inc. ("WCI") of the common stock of WinStar Gateway Network Inc., formerly known as Communications Gateway Network, Inc. ("CGN"), and for approval of the name change from CGN to WGN. WGN files this application pursuant to F.S.A. § 364.345(2). In the alternative, to the extent that the Commission determines, upon review of the instant application, that approval of this transfer of control is not required under applicable statutes and regulations, WGN requests that the Commission issue an order declining to exercise jurisdiction and dismissing the application.

In support of this application, WGN respectfully provides the following:

1. The Companies: WGN is an interexchange carrier, providing resold intra- and interstate long distance services throughout the United States, including in Florida. Previously, WGN operated under the name Communications Gateway Network, Inc. CGN obtained from this Commission a certificate of public convenience and necessity on October 30 1992, in Docket No. 920757-T1. WGN is a wholly-owned subsidiary of WinStar Communications, Inc. ("WCI").

DOCUMENT NUMBER-DATE

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WCI is a publicly-traded holding company whose stock is traded over the NASDAQ market system. WCI is a Delaware corporation having its principal place of business at 230 Park Avenue, 31st Floor, New York, New York 10169. Through its various operating affiliates, WCI specializes in the development and provision of telecommunications services throughout the United States.

2. Location and Incorporation: WGN's principal address is 5221 North O'Connor, Suite 850, E. Tower at Williams Square, Irving, Texas 75039. A copy of Applicant's Certificate of Amendment to Certificate of Incorporation is appended hereto as Exhibit A.

3. Designated Contacts: Questions concerning this application should be directed to:

Dana Frix, Esq.  
Wendy E. Sheldon, Esq.  
**Swidler & Berlin, Chtd.**  
3000 K Street, NW, Suite 300  
Washington, D.C. 20007-5116  
(202) 424-7662 (Tel)  
(202) 424-7645 (Fax)

Copies of such correspondence should also be sent to:

Ms. Dana Hoyle  
Director of Regulatory Affairs  
WinStar Gateway Network, Inc.  
5221 N. O'Connor Avenue, Suite 850  
Irving, Texas 75039  
(214) 401-0400

4. The Stock Acquisition/Transfer of Control: At the time it was certificated, CGN was a privately-held Delaware corporation with multiple shareholders. Between December 1, 1992 and August 6, 1993, WCI entered into a series of transactions that resulted in the acquisition of 100% of CGN by WCI.

Specifically, as of May 21, 1992, WCI obtained an option to acquire controlling interest in CGN. Subsequently certification was granted to CGN on October 30, 1992. By March 10, 1993, pursuant to its option, WCI had purchased 51% of the outstanding shares of common stock of CGN, for a total investment of \$1,045,000.00 financed by a private placement of debts and warrants. On August 6, 1993, pursuant to a stock exchange offer, WCI acquired the remaining 49% of the outstanding stock for \$1,470,000.00.

No application seeking approval of the corporate transaction was filed at the time the transfer occurred. At all times subsequent to certification, WCI maintained its right to exercise its option to obtain controlling interest in CGN, and pursuant to consultation with its counsel at the time, understood the exercise of the option to be a corporate formality which did not require obtaining Commission approval. This good-faith belief was further supported by oral communications between CGN and the Commission. Indeed, subsequently and in the routine course of business CGN advised the Commission that CGN had been acquired by WCI (as reflected in Exhibit B, attached hereto), and filed a revised tariff to reflect this change of name pursuant to Commission procedures. Moreover, public disclosure of the transfer of control was made by WCI in its SEC filings. Attached as Exhibit C is an excerpt from WCI's SEC Form 10-K for the fiscal year ending February 28, 1995, which describes the transaction that resulted in the transfer of control. Further, as discussed below, the stock transfer in no way jeopardized the quality of service that WGN provides to its customers.

Approval of this application will resolve any issue regarding the transaction described herein. As a publicly traded company, WCI has a responsibility to the public interest and to its shareholders to take all actions necessary to be fully in compliance with prevailing regulatory requirements. It is

in the furtherance of such interests that WGN desires to ensure that it has complied fully with the lawful rules, regulations and requirements of this Commission.

5. Name Change and Revised Tariffs: As indicated above, after completion of the stock acquisition, CGN personnel discussed the transaction with the Commission staff. Unfortunately, records of those discussions no longer exist and the relevant personnel have since left the Company. However, CGN legally changed its name to WinStar Gateway Network, Inc. and the Company subsequently notified the Commission of its name change. See Exhibit C. Also, after completion of the stock acquisition and the resulting name change, WGN filed a revised tariff reflecting its name change. The revised tariff was filed on September 25, 1995.

6. Qualifications: WGN is financially, managerially, and technically qualified to provide telecommunications services to customers in the State. WGN's officers and directors are well qualified to execute its business plan, having extensive managerial, financial, and technical telecommunications experience. Descriptions of the telecommunications and managerial experience of the WGN's key personnel are attached hereto as Exhibit D.

In addition, as a wholly-owned subsidiary of WCI, WGN relies upon WCI's current financial qualifications. In particular, WCI is a publicly-traded company whose various operating subsidiaries specialize in telecommunications services and products. WCI's stock is traded on NASDAQ's national market system. With the resources of WCI, WGN possesses the sound financial base necessary to continue to conduct its telecommunications operations in the State.

7. Approval of Acquisition: The transfer of control of CGN to WCI (and the subsequent change of name from CGN to WGN) was in the public interest, and was made in good faith. As noted, WCI maintained an exercisable option to obtain controlling interest in CGN prior to its

certification by this Commission, and exercise of that option was consistent with ensuring stable management and strong financial support of the Company. As requested herein, the Commission's approval of the transfer, on a *nunc pro tunc* basis, serves the public interest in promoting competition among long distance carriers by allowing an efficient operating entity with a strong internal corporate structure to continue providing high quality telecommunications services.

The transfer of control caused no harm to WGN's customers when it occurred, nor at any time thereafter. For example, as a result of the transfer, there has been no change in the quality of service provided to customers. Also, the rates charged for such services were not affected by the transaction. Thus, with the exception of the change of name, the transfer of control was totally transparent to WGN's customers, and in no way created confusion or inconvenience. To the contrary, the transfer has enabled the Applicant to realize operational and management efficiencies, to obtain strong financial support, and to realize other corporate benefits that have inured to the benefit of Applicant's subscribers.

### Conclusion

For the reasons stated herein, WGN requests that the Commission approve, to the extent necessary, the transfer of control of CGN (now known as WGN) to WCI on a *nunc pro tunc* basis (and the change of name from CGN to WGN). Alternatively, if the Commission determines that formal approval of this transfer of control is not in fact required, WGN requests that the Commission issue an order declining to exercise jurisdiction and dismissing the application. In this way, WGN can be assured that it has in all respects fully complied with the Commission's practices and rules concerning transfer of control transactions.

Respectfully submitted,

By: Dana Frix  
Dana Frix, Esq.  
Wendy E. Sheldon, Esq.  
SWIDLER & BERLIN, CHTD.  
3000 K Street, NW, Suite 300  
Washington, D.C. 20007  
(202) 424-7662 (Tel)  
(202) 424-7645 (Fax)

Counsel for WinStar Gateway  
Network, Inc.

Ms. Dana Hoyle  
Director of Regulatory Affairs  
WINSTAR GATEWAY NETWORK, INC.  
5221 N. O'Connor Avenue, Suite 850  
Irving, Texas 75039  
(214) 401-0400

Dated: April 24, 1996

**EXHIBITS**

<b>Exhibit A</b>	<b>Certificate of Amendment to Certificate of Incorporation</b>
<b>Exhibit B</b>	<b>Notice of Acquisition and Name Change</b>
<b>Exhibit C</b>	<b>Excerpt From WCI Form 10-K</b>
<b>Exhibit D</b>	<b>Telecommunications and Managerial Experience of WGN's Key Personnel</b>

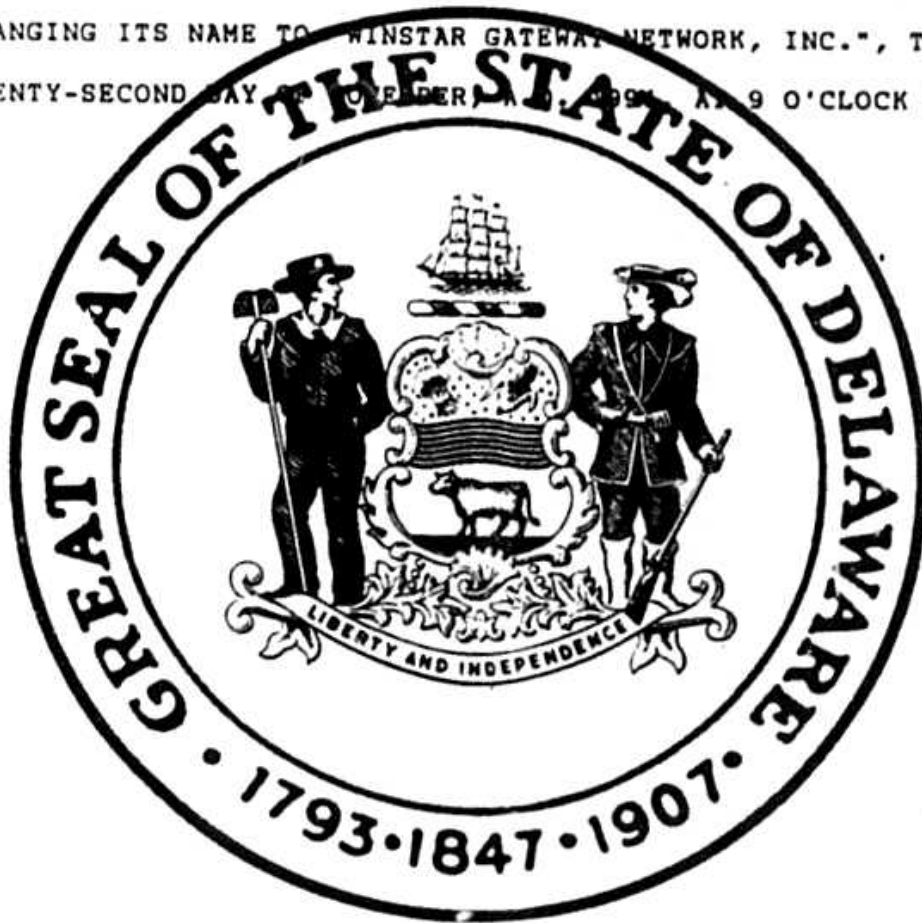


**EXHIBIT A**

**Certificate of Amendment to Certificate of Incorporation**

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THAT THE SAID "COMMUNICATIONS GATEWAY NETWORK, INC.", FILED A CERTIFICATE OF AMENDMENT, CHANGING ITS NAME TO "WINSTAR GATEWAY NETWORK, INC.", THE TWENTY-SECOND DAY OF FEBRUARY, 1995, AT 9 O'CLOCK A.M.



*Edward J. Freel*

Edward J. Freel, Secretary of State

2297966 8320

950100050

AUTHENTICATION: 7496586

DATE: 05-05-95

CERTIFICATE OF AMENDMENT  
TO THE  
CERTIFICATE OF INCORPORATION  
OF  
COMMUNICATIONS GATEWAY NETWORK, INC.

---

Adopted in accordance with the provisions  
of Section 242 of the General Corporation Law  
of the State of Delaware

---

The undersigned, being the Vice President and  
Secretary, respectively, of Communications Gateway Network,  
Inc., a Delaware corporation ("Corporation"), do hereby certify  
as follows:

FIRST, that the Certificate of Incorporation of the  
Corporation has been amended by striking out Article FIRST and  
substituting in lieu thereof the following:

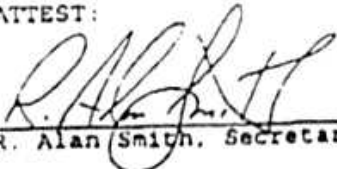
"FIRST: The name of the Corporation is  
WINSTAR GATEWAY NETWORK, INC."

SECOND, that such amendment to the Certificate of  
Incorporation was duly adopted in accordance with the provisions  
of Section 242 of the General Corporation Law of the State of  
Delaware by the affirmative vote of a majority of the  
outstanding shares of the Common Stock of the Corporation.

IN WITNESS WHEREOF, the undersigned have signed this Certificate under penalties of perjury that the matters set forth in this Certificate are the acts and deeds of the Corporation and the facts stated herein are true this day of November, 1994.

  
John Bush, Vice President

ATTEST:

  
R. Alan Smith, Secretary

**EXHIBIT B**

**Notice of Acquisition and Name Change**



# COMMUNICATIONS GATEWAY NETWORK

*Incorporated*

A WinStar Communications Company

VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

August 12, 1994

Division of Records  
Florida Public Service Commission  
101 E. Gaines Street, Fletcher Building  
Tallahassee, Florida 32399-0850

Dear Sirs:

Communications Gateway Network, Inc. - Florida, is a registered foreign corporation and is wholly owned by Communications Gateway Network, Inc., a Delaware Corporation. Communications Gateway Network, Inc., Delaware, subsequent to our certification to operate as an interexchange company or a long distance reseller, has been acquired by WinStar Communications, Inc., a NASDAQ trading company. This in no way changes the relationship of Communications Gateway Network, Inc. - Delaware to our Florida foreign corporation.

This is follow-up per our verbal conversation to update your records.

Respectfully Submitted,

COMMUNICATIONS GATEWAY NETWORK, INC.

*Christia Montero*

Christia Montero  
Regulatory Compliance Administrator

A...JA'S First  
Telecommunications  
Gateway Network

- One Plus Long Distance
- 800 Service
- Point to Point
- Debit Cards
- Custom Calling Cards
- Custom Private Networks
- Gateway Dedicated Access
- Multiple Carrier Synergistic Solutions Through One "Gateway" Network

PCS

WinStar Wireless, Inc.

Member

**JMPTEL**

Charter Member

**tra**

5221 N. O'Connor, Suite 850  
E Tower at Williams Square  
Irving, TX 75039  
Tel 214-401-0400  
Fax 214-401-0427

1540 Powers Ferry Road  
Bldg 1, Suite 300  
Marietta, GA 30067  
Tel 404-933-0335  
Fax 404-933-0474

WinStar Communications, Inc.  
(1...Q-WCII)  
5...n Avenue, 40th Floor  
New York, NY 10017  
Tel 212-687-7577



5221 N. O'Connor, Suite 850  
E. Tower at Williams Square  
Irving, TX 75039

**GATEWAY NETWORK**

A WinStar Communications Company

Tel 214-401-0400  
Fax 214-401-0427

September 19, 1995

Florida Public Service Commission  
101 E. Gaines Street  
Fletcher Building  
Tallahassee, FL. 32399-0850

Dear Sir/Madam:

Enclosed are new tariff pages of WinStar Gateway Network, Inc.'s (formerly  
Communications Gateway Network, Inc.) tariff for filing.

The purpose of this tariff is to submit for approval the name change of CGN to WinStar  
Gateway Network, Inc. CGN is refiling a new tariff in its entirety to reflect the name  
change.

WinStar respectfully requests the Commission's approval upon receipt of the enclosed  
tariff as there has been no change in rates or services provided.

Please date stamp and return the duplicate filing.

If you have any questions in regard to this filing, please contact the undersigned at 214-  
401-0400.

Respectfully submitted,

WINSTAR GATEWAY NETWORK, INC.

*Christia Montero*

Christia Montero  
Regulatory Compliance Administrator

Enclosure



RECEIVED  
SEP 25 1995  
REGULATORY  
ADMINISTRATION

**EXHIBIT C**

**Excerpt From WCI Form 10-K**



UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
FORM 10-KSB

(Mark One)

ANNUAL REPORT UNDER SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934 [FEE REQUIRED] - For the fiscal year ended February 28, 1995.

TRANSITION REPORT UNDER SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF 1934 [NO FEE REQUIRED]

Commission File Number: 1-10728

**WINSTAR COMMUNICATIONS, INC.**

(Exact name of small business issuer as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

13-3585278  
(IRS Employer Identification No.)

230 Park Ave., 31st Floor, New York, NY 10169

(Address of principal executive offices)

(212) 687-7577

(Issuer's telephone number)

Securities registered under Section 12(b) of the Exchange Act:

Title of Each Class  
None

Name of Each Exchange  
on Which Registered

Securities registered under Section 12(g) of the Exchange Act:

Title of Each Class  
Common Stock \$0.01 par value

Check whether the issuer (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Check if there is no disclosure of delinquent filers in response to Item 405 of Regulation S-B contained in this form, and no disclosure will be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-KSB or any amendment to this Form 10-KSB

State issuer's revenues for its most recent fiscal year: \$25,584,760

State the aggregate market value of the voting stock held by nonaffiliates of the registrant computed by reference to the last sales price of the Common Stock at May 19, 1995: \$99,463,196

State the number of shares outstanding of each of the issuer's classes of common equity, as of the latest practicable date: 20,566,941 shares of Common Stock outstanding at May 19, 1995.

**DOCUMENTS INCORPORATED BY REFERENCE**

The information required in Part III by Items 9, 10, 11 and 12 is incorporated by reference to the Registrant's proxy statement in connection with the annual meeting of stockholders anticipated to be held on September 12, 1995 which will be filed by the Registrant within 120 days after the close of its fiscal year.

## BUSINESS

### Item 1: Business

#### General

WinStar Communications, Inc. and its subsidiaries (collectively the "Company") develops, markets and delivers telecommunication services in the United States. The Company has recently begun to provide services in the growing local telecommunications market, which has become increasingly open to competition as a result of recent technological developments and pro-competitive legislative and regulatory initiatives. The Company provides local telecommunication services on a point-to-point basis via 400 megahertz ("MHz") of wireless, digital millimeter wave capacity in the 38 gigahertz ("GHz") band ("Wireless Fiber<sup>SM</sup>"). The Company's local telecommunication services are offered in 29 of the 31 largest Metropolitan Statistical Areas ("MSAs") in the United States, including the top 26 MSAs, such as Atlanta, Boston, Chicago, Los Angeles, New York and San Francisco, among others. The Company also supplies switchless and switched long distance services on a resale basis throughout the United States. In connection with its telecommunication activities, the Company seeks to access information services. The Company also markets consumer products nationwide through marketing networks and expertise developed prior to the Company's entry into the telecommunications industry.

#### Corporate History

The Company was incorporated under the laws of the State of Delaware in September 1990, originally to serve as a holding company for Robem Sports, Inc. ("Sports"), a marketer and distributor of sports-related apparel which was incorporated under the laws of the State of Delaware in December 1988. In August 1992, seeking to expand its consumer products base, the Company acquired, by merger, WinStar Global Products, Inc., (formerly Beauty Labs, Inc., and hereafter referred to as "WinStar Global") a manufacturer, marketer and distributor of personal care products which was incorporated under the laws of the State of Delaware in February 1987. Inne Dispensables, Inc. ("Inne Dispensables") was incorporated as a wholly owned subsidiary of WinStar Global under the laws of the State of New York in August 1993 and acquired certain assets of Savonnerie, Inc., a manufacturer and distributor of bath products, in September 1993.

In late 1992, the Company redirected its strategy and began to implement a plan to enter the telecommunications market for services. In 1993 the Company acquired WinStar Gateway Network, Inc. (formerly Communications Gateway Network, Inc., and hereafter referred to as "WGN"), a company incorporated under the laws of the State of Delaware in May 1992, which provides switchless and switched long distance services on a resale basis. The Company acquired WGN in two stages. On March 10, 1993, the Company completed the exercise of an option to purchase an aggregate of 51% of the outstanding shares of the common stock of WGN by investing \$1,045,000 for working capital purposes. The option was exercised by the Company in portions, commencing in December 1992, and was financed primarily by a private placement of debt and warrants. On August 6, 1993, pursuant to a stock exchange offer, the Company acquired the remaining 49% interest in WGN for 1,127,351 shares of the Company's common stock valued at \$1,470,000.

The Company increased its presence in the telecommunications market by acquiring, in February of 1994, a 16% equity interest in Avant-Garde Telecommunications, Inc. ("Avant-Garde"), a company incorporated in January 1994 under the laws of the State of Delaware, along with two options to acquire 33% and 31% of Avant-Garde, respectively (the "AGT Options"). The acquisition of the equity interest in Avant-Garde and the AGT Options was made by WinStar Wireless, Inc. ("Wireless"), a wholly-owned subsidiary of the Company, incorporated under the laws of the State of Delaware in February 1994, from Avant-Garde's majority shareholder and president, Mr. Leo George. The purchase price was \$1,600,000 payable as follows: \$500,000 in cash, 225,000 shares of the Company's Preferred Stock D valued at \$900,000, and a \$200,000 note payable to the seller. On April 14, 1994, Wireless exercised the initial AGT Option and acquired an additional 33% equity interest in Avant-Garde for \$3,300,000 in

**EXHIBIT D**

**Telecommunications and Managerial Experience of WGN's Key Personnel**

**WINSTAR GATEWAY NETWORK, INC.'S  
MANAGERIAL QUALIFICATIONS**

Mr. Arthur Greene - President and Chief Operating Officer

Mr. Greene has been President and COO of WinStar Gateway Network, Inc. since January, 1995. Mr. Greene has over 25 years of experience in the Telecommunications Industry. Prior to joining WinStar, Mr. Greene, through the ITC Group, an International Consulting Organization specializing in the Telecommunications Industry, was Vice President of Operations of Unitel Communications, Canada's national telecommunications facilities-based carrier that is owned by Canadian Pacific United, Progress Communications, Inc. and AT&T. Prior to a successful consulting carrier, Mr. Greene had an extensive operational and executive management career from 1978 to 1991 at MCI Communications, Inc. culminating in the position of Vice President of Network Operations at MCI.

Mr. Peter K. LaRose - Vice President, Finance

Peter K. LaRose has over 12 years experience in the Telecommunications Industry; 11 years with MCI Communications, Inc. as Vice President, Finance and Controller and 1 year in his present position with WinStar Gateway Network, Inc. as Vice President, Finance. Prior to joining MCI, Mr. LaRose was an audit manager for Price Waterhouse in Baltimore and Madrid for 11 years. He is a graduate of the Pennsylvania State University with a B.S. in Business Administration.