

October 6, 2014

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor – Room N201
Harrisburg, PA 17120

Re: Docket Nos. A-2014-2440493; A-2014-2440526; A-2014-2440527; A-2014-2440528;
A-2014-2440529; A-2014-2440530; A-2014-2440531; A-2014-2440532; A-2014-
2440533; A-2014-2440534; A-2014-2440535 and A-2014-2440536
Joint General Rule Application of Cavalier Telephone Mid-Atlantic, LLC, et al.

Dear Secretary Chiavetta:

We are counsel to Cavalier Telephone Mid-Atlantic, LLC, Intellifiber Networks, Inc., LDMI Telecommunications, Inc., McLeodUSA Telecommunications Services, LLC, PAETEC Communications, Inc., Talk America, Inc., US LEC of Pennsylvania, LLC, Windstream Communications, Inc., Windstream D&E Systems, Inc., Windstream KDL, Inc., Windstream Norlight, Inc. and Windstream NTI, Inc. in the above matter and are enclosing via electronic filing their Answer to the Preliminary Objections of the Communications Workers of America. A copy of the Answer is being served in accordance with the certificate of service attached to it.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By 

Thomas T. Niesen

Enclosure

cc: Certificate of Service (w/encl.)
Cesar Caballero, Esq. (w/encl.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint General Rule Application of	:	Docket No. A-2014-2440493
Cavalier Telephone Mid-Atlantic, LLC,	:	Docket No. A-2014-2440526
Intellifiber Networks, Inc., LDMI	:	Docket No. A-2014-2440527
Telecommunications, Inc., McLeodUSA	:	Docket No. A-2014-2440528
Telecommunications Services, LLC,	:	Docket No. A-2014-2440529
PAETEC Communications, Inc., Talk	:	Docket No. A-2014-2440530
America, Inc., US LEC of Pennsylvania,	:	Docket No. A-2014-2440531
LLC, Windstream Communications, Inc.,	:	Docket No. A-2014-2440532
Windstream D&E Systems, Inc.,	:	Docket No. A-2014-2440533
Windstream KDL, Inc., Windstream	:	Docket No. A-2014-2440534
Norlight, Inc. and Windstream NTI, Inc.	:	Docket No. A-2014-2440535
for approval of the transfer of telephone	:	Docket No. A-2014-2440536
system assets of Transferors to	:	
Communications Sales and Leasing, Inc.	:	

**ANSWER OF CAVALIER TELEPHONE MID-ATLANTIC, LLC, INTELLIFIBER
NETWORKS, INC., LDMI TELECOMMUNICATIONS, INC., MCLEODUSA
TELECOMMUNICATIONS SERVICES, LLC, PAETEC COMMUNICATIONS, INC.,
TALK AMERICA, INC., US LEC OF PENNSYLVANIA, LLC, WINDSTREAM
COMMUNICATIONS, INC., WINDSTREAM D&E SYSTEMS, INC., WINDSTREAM
KDL, INC., WINDSTREAM NORLIGHT, INC. AND WINDSTREAM NTI, INC. IN
OPPOSITION TO PRELIMINARY OBJECTIONS OF COMMUNICATIONS
WORKERS OF AMERICA**

AND NOW come Cavalier Telephone Mid-Atlantic, LLC, Intellifiber Networks, Inc., LDMI Telecommunications, Inc., McLeodUSA Telecommunications Services, LLC, PAETEC Communications, Inc., Talk America, Inc., US LEC of Pennsylvania, LLC, Windstream Communications, Inc., Windstream D&E Systems, Inc., Windstream KDL, Inc., Windstream Norlight, Inc. and Windstream NTI, Inc. (the foregoing, all of which are competitive local exchange carriers and/or competitive interexchange carriers, are sometimes referred to herein,

collectively, as the “Joint Applicants”), by their attorneys, and, pursuant to 52 Pa. Code § 5.101, answer the preliminary objections filed in the above captioned proceeding by the Communications Workers of America (“CWA”). In opposition to the preliminary objections, Joint Applicants submit as follows:¹

1. This matter is an application proceeding pursuant to the Abbreviated Procedures for Review and Approval of Transfer of Control for Telecommunications Utilities, 52 Pa. Code § 63.321, *et seq.* (“Abbreviated Procedures”). Joint Applicants are competitive local exchange carriers and/or competitive interexchange carriers seeking the approval of the Public Utility Commission (“Commission”) for an asset transfer under Commission rules that establish cost-effective review and approval periods in telecommunications application proceedings. This is not a complaint proceeding in which a defendant must prepare a defense.²

2. Joint Applicants have provided the information required by the Abbreviated Procedures, including “a summary description of the transaction” pursuant to 52 Pa. Code § 63.324(d)(5), and it is certainly possible for the Commission to review, understand and approve the proposed transaction consistent with its telecommunications rules and the requirements of the Public Utility Code.³ Any difficulty experienced by CWA is neither relevant nor material to the

¹ CWA’s pleading presents two objections each of which is based on a claim of “insufficient specificity.” Commission regulations at 52 Pa. Code § 5.101(e) do not require an answer to a preliminary objection regarding insufficient specificity until further directed by the presiding officer or the Commission. Joint Applicants, nevertheless, submit this answer in opposition to the preliminary objections. Pursuant to 52 Pa. Code § 5.101(f), the numbered paragraphs of this answer correspond to the numbered paragraphs of the preliminary objections filed by CWA.

² In support of its preliminary objections, CWA cites case law addressing lack of sufficiency of a pleading where a defendant must prepare a defense. CWA is not a defendant and this regulatory proceeding is not a complaint proceeding. CWA’s case law citation has no application here.

³ In the Verified Statement of Robert Gunderman included with the Joint Application, Mr. Gunderman also explained at length how the proposed transaction will affirmatively promote the service accommodation, convenience, or safety of the public in a substantial way and that the transaction is necessary or proper for the service, accommodation, convenience or safety of the public.

proposed transaction. None of the Joint Applicants has a single employee that is a CWA member and CWA has no bargaining agreement with any of the Joint Applicants. CWA, in short, has no standing or interest to involve itself in this matter and, thus, no basis under the Public Utility Code or the regulations thereunder to submit preliminary objections.⁴

Reply to CWA Objection 1

3. In Paragraph 5 of their Joint General Rule Application (“Joint Application”), Joint Applicants state as part of the “summary description of the transaction” that Joint Applicants propose, in regard to Pennsylvania operations, to transfer to Communications Sales and Leasing, Inc. (“CSL”) “certain fixed assets of the Transferors, including copper, fiber, real estate and other network assets.”⁵ CWA, as aforesaid, has no interest in the Joint Applicants transfer of their Pennsylvania assets and no standing to involve itself in this matter.

4. The Joint Application is sufficiently specific concerning a transaction involving competitive telecommunications entities in the Commonwealth of Pennsylvania and an application submitted pursuant to the Abbreviated Procedures created by the Commission for telecommunications transactions. The Abbreviated Procedures do not require Joint Applicants to identify the specific property to be transferred. They require only a “summary description of the transaction.” CWA cites no regulatory provision requiring Joint Applicants to identify the specific property to be transferred.

5. The Joint Application is sufficiently specific concerning a transaction involving competitive telecommunications entities in the Commonwealth of Pennsylvania and an

⁴ Coincident with the filing of this answer to the preliminary objections of CWA, Joint Applicants are filing preliminary objections challenging the standing of CWA to participate in this proceeding and asking the Public Utility Commission to dismiss the protest of CWA.

⁵ Footnote 1 to the Joint General Rule Application explains further, however, that Joint Applicants will not transfer other tangible assets, including central office switches, electronics, equipment used for maintenance and repair, and backend systems, such as routing, provisioning and billing systems.

application submitted pursuant to the Abbreviated Procedures created by the Commission for telecommunications transactions. The Abbreviated Procedures do not require Joint Applicants to identify the specific location of property to be transferred. They require only a “summary description of the transaction.” CWA cites no regulatory provision requiring Joint Applicants to identify the specific location of property to be transferred.

6. The Joint Application is sufficiently specific concerning a transaction involving competitive telecommunications entities in the Commonwealth of Pennsylvania and an application submitted pursuant to the Abbreviated Procedures created by the Commission for telecommunications transactions. The Abbreviated Procedures do not require Joint Applicants to identify the consideration Joint Applicants will receive from CSL for the transfer. They require only a “summary description of the transaction.” CWA cites no regulatory provision requiring Joint Applicants to identify the consideration to be received from CSL.

7. The Joint Application is sufficiently specific concerning a transaction involving competitive telecommunications entities in the Commonwealth of Pennsylvania and an application submitted pursuant to the Abbreviated Procedures created by the Commission for telecommunications transactions. The Abbreviated Procedures do not require Joint Applicants to provide copies of agreements associated with the proposed transfer. They require only a “summary description of the transaction.” CWA cites no regulatory provision requiring Joint Applicants to provide copies of agreements.

Reply to CWA Objection 2

8. In Paragraph 5 of their Joint Application, Joint Applicants state as part of the “summary description of the transaction” that CSL will lease the transferred assets back to Windstream Holdings, Inc. for the exclusive use and benefit of the Joint Applicants under a long-

term master lease that, at Holdings option, will be in effect for thirty-five years. CWA, as aforesaid, has no interest in the lease arrangement and no standing to involve itself in this matter.

9. The Joint Application is sufficiently specific concerning a transaction involving competitive telecommunications entities in the Commonwealth of Pennsylvania and an application submitted pursuant to the Abbreviated Procedures created by the Commission for telecommunications transactions. Although CWA avers that the Joint Application fails to mention any other lease terms and conditions, Joint Applicants, in fact, did include, as part of their “summary description,” a summary of other lease terms explaining that, under the lease, Joint Applicants will be responsible for the operation and maintenance of the transferred assets and that they will continue to have responsibility for quality of service standards and fulfillment of all regulatory obligations.⁶ The Abbreviated Procedures require only the “summary description” presented by Joint Applicants and CWA cites no regulatory provision to the contrary.

10. The Joint Application is sufficiently specific concerning a transaction involving competitive telecommunications entities in the Commonwealth of Pennsylvania and an application submitted pursuant to the Abbreviated Procedures created by the Commission for telecommunications transactions. The Abbreviated Procedures do not require Joint Applicants to provide a copy of the lease. They require only a “summary description of the transaction” and Joint Applicants presented a summary of the lease terms as discussed above. CWA cites no regulatory provision requiring Joint Applicants to provide a copy of the lease.

⁶ Joint Application at 5. Joint Applicants further explained in their “summary” that they are not abandoning any of their existing operating authority. Joint Applicants will continue to offer telecommunications services in Pennsylvania.

WHEREFORE Cavalier Telephone Mid-Atlantic, LLC, Intellifiber Networks, Inc., LDMI Telecommunications, Inc., McLeodUSA Telecommunications Services, LLC, PAETEC Communications, Inc., Talk America, Inc., US LEC of Pennsylvania, LLC, Windstream Communications, Inc., Windstream D&E Systems, Inc., Windstream KDL, Inc., Windstream Norlight, Inc. and Windstream NTI, Inc. request that the Public Utility Commission deny the preliminary objections of the Communications Workers of America, grant the preliminary objections of Joint Applicants as referenced in footnote 4 above and, thereafter, approve this Joint General Rule Application.

Respectfully submitted,

By: 

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Dated: October 6, 2014

VERIFICATION

I, Robert Gunderman, state that I am Interim Chief Financial Officer and Treasurer of Windstream Holdings, Inc. and its applicant subsidiaries. I am authorized to make this verification on their behalf and hereby state that the facts set forth in the foregoing Answer to Preliminary Objections are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).



Robert Gunderman
Interim Chief Financial Officer and Treasurer
Windstream Holdings, Inc.

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system assets of Transferors to	:	
Communications Sales and Leasing, Inc.	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this 6th day of October, 2014, served a true and correct copy of the foregoing Answer of Joint Applicants to Preliminary Objections of the Communications Workers of America upon the persons and in the manner set forth below:

Via Electronic and First Class Mail

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