



THOMAS, NIESEN & THOMAS, LLC

Attorneys and Counsellors at Law

THOMAS T. NIESEN
Direct Dial: 717-255-7641
tniesen@tntlawfirm.com

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

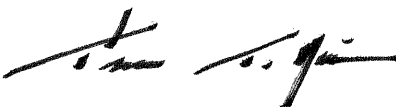
Re: Docket Nos. A-2014-2440493; A-2014-2440526; A-2014-2440527; A-2014-2440528;
A-2014-2440529; A-2014-2440530; A-2014-2440531; A-2014-2440532; A-2014-
2440533; A-2014-2440534; A-2014-2440535 and A-2014-2440536
Joint General Rule Application of Cavalier Telephone Mid-Atlantic, LLC, et al.

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 Preliminary Objection to the Protest of the Communications Workers of America. A copy of the Preliminary Objection 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.	:	

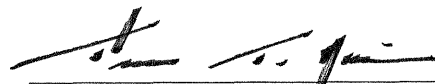
NOTICE TO PLEAD

To Communications Workers of America, through its attorney:

Scott J. Rubin, Esq.
333 Oak Lane
Bloomsburg, PA 17815
Scott.J.Rubin@gmail.com

Pursuant to 52 Pa. Code § 5.101(b), you are hereby notified, that an answer to the preliminary objection of Joint Applicants to your Protest of the above captioned Joint General Rule Application shall be filed with the Public Utility Commission within 10 days of the date of service of the preliminary objection.

Date of Service: October 6, 2014



Thomas T. Niesen, Esq.

**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.	:	

**PRELIMINARY OBJECTION OF JOINT APPLICANTS TO PROTEST 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, file this preliminary objection to the protest of the Communications Workers of America

(“CWA”). In support of its preliminary objection and dismissal of the protest for lack of standing, Joint Applicants submit as follows:

INTRODUCTION

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. None of the Joint Applicants is an incumbent local exchange carrier.

2. CWA filed a protest to the Joint Application asking the Commission to investigate the Joint Application and related transactions to determine whether they are consistent with the public interest and otherwise in accordance with law. CWA, however, has no standing or interest to involve itself in this matter. As set forth herein, 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.

PRELIMINARY OBJECTION

CWA HAS NO STANDING TO PARTICIPATE IN THIS PROCEEDING

3. Section 5.101 of the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code § 5.101, provide for the filing of preliminary objections in response to any pleading except motions and prior preliminary objections. Recognized grounds for preliminary objection include standing to participate in a proceeding.¹

4. The Commission has held that standing requires a person or entity to have a direct, immediate and substantial interest in the subject matter of a proceeding. *Joint Application of Pennsylvania-American Water Co. and Evansburg Water Co. for Approval of the Transfer, by Sale, of the Water Works Property and Rights of Evansburg Water Co. to Pennsylvania-American Water Co.*, A-212285F0046/47 and A-210870F01 (Ordered entered July 9, 1998); *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975); *Landlord Service Bureau, Inc. v. Equitable Gas Co.*, 79 Pa. PUC 342 (1993); *Re Equitable Gas Co.*, 76 Pa. PUC 23 (1992); *Manufacturers' Association of Erie v. City of Erie - Bureau of Water*, 50 Pa. PUC 43 (1976); *Waddington v. Pennsylvania Public Utility Commission*, 670 A.2d 199 (Pa. Cmwlth. 1995), *alloc. denied*, 678 A.2d 368 (Pa. 1996). Requiring a person or entity to have a direct, immediate and substantial interest in the subject matter of a proceeding helps avoid frivolous, harassing lawsuits whose costs are ultimately borne, at least in part, by utility ratepayers. *Pennsylvania Public Utility Commission v. National Fuel Gas Distribution Corp.*, 73 Pa. PUC 552 (1990).

¹ 52 Pa. Code § 5.101(a)(7).

A. **CWA Has No Direct, Immediate or Substantial Interest in The Subject Matter of This Proceeding**

5. CWA has no direct, immediate or substantial interest in the subject matter of this proceeding and, thus, no standing to participate in it. The facts in this regard are clear:

This proceeding concerns a proposed transaction involving twelve Joint Applicants that are competitive local exchange carriers and/or competitive interexchange carriers. CWA has no employee bargaining relationship with any of the Joint Applicants. Therefore, CWA has no direct, immediate or substantial interest in the Joint Applicants proposed transfer of Pennsylvania assets.

6. CWA's protest presents no averment that the facts are other than as set forth above. CWA does aver in paragraph two of its protest that it is the authorized bargaining representative for approximately 80 employees of Joint Applicants "*and their affiliates in Pennsylvania.*" The averment warrants close inspection. In point of fact, CWA, as set forth above, is not the bargaining representative for any employees of Joint Applicants. As to "*affiliates*" of Joint Applicants, CWA is the authorized representative for 73 employees of Windstream's Pennsylvania incumbent local exchange carriers (ILEC)² but the Windstream Pennsylvania ILECs are not Joint Applicants. No assets of Windstream Pennsylvania ILECs are being transferred as part of the proposed transaction. CWA's relationship with Windstream "*affiliate*" does not create a direct, immediate or substantial interest in the Joint Applicants' proposed transaction or otherwise justify its participation in this proceeding. CWA's interest must be measured solely by its relationship with the Joint Applicants.

² Windstream's Pennsylvania ILECs are Windstream Pennsylvania, Windstream D&E, Windstream Buffalo Valley and Windstream Conestoga.

B. CWA's Additional Averments Do Not Support Its Standing to Participate in this Proceeding

7. In support of its protest, CWA presents several arguments which further exhibit its lack of standing as well as a lack of understanding of the proposed transaction. Each is addressed below:

- a. At paragraphs 6, 7 and 8 of its protest, CWA avers that the proposed transaction is part of a series of transactions; that Joint Applicants and their affiliates have chosen to file Pennsylvania applications in piecemeal fashion; and that further proceedings are expected involving transfer of assets by Windstream's Pennsylvania ILECs. Although the overall transaction is multi-state, the specifics differ from state to state. In Pennsylvania, the Windstream ILECs are not part of and will not be part of the transaction. In other states, such as Alabama cited in paragraph 8 of the Protest, ILECs are part of the transaction. What is significant here is that no assets of Windstream's Pennsylvania ILECs are being transferred as part of the proposed transaction. The transaction, contrary to the averment presented in the protest, is, moreover, not being presented piecemeal in Pennsylvania. Although the three applications are related, they are separate. Each, for example, has different applicants. Most significantly, however, the Windstream Pennsylvania ILECs are not transferring assets as part of the proposed transaction and, contrary to CWA's expectations, no further Pennsylvania proceeding is forthcoming.
- b. At paragraphs 10 through 16 of its protest, CWA expresses concern with the possible transfer of poles or conduit. Joint Applicants, however, have no poles or conduit. They, consequently, are not transferring poles or conduit as part of the proposed transaction. CWA also expresses concern in these paragraphs with the possible transfer of copper and fiber placed on poles and conduits to a non-utility. Joint Applicants will transfer copper and fiber to Communications Sales and Leasing, Inc. ("CSL") but the legal effect will be minimal. Joint Applicants will continue to be the sole and exclusive operator of any transferred copper and fiber. There, consequently, will be no change in the nature, scope or manner of their use of copper or fiber.
- c. At paragraphs 17 through 20 of its protest, CWA expresses concern with the possible transfer of easements or rights of way to a non-utility. Joint Applicants are parties to easements and rights-of-way. Although Joint Applicants will transfer their beneficial rights and interests to CSL they will retain title. There will be no change in the nature, scope or manner of use of the easements and rights of way, and third parties will continue to bill Joint Applicants, receive payment from Joint Applicants and interact with Joint Applicants with respect to all matters arising from these arrangements.

- d. At paragraphs 21 through 22 of its protest, CWA expresses concern with possible restrictions on the transfer of property financed with grants under the American Recovery and Reinvestment Act, which are not mentioned in the Joint Application. Joint Applicants were not recipients of ARRA grant funding and none of the Pennsylvania assets to be transferred were funded with ARRA grants or other public funding that would restrict their transfer.
- e. At paragraph 23 of its protest, CWA contends that the transaction, if approved, should include a binding commitment for specific, additional capital investments in Pennsylvania by Windstream Companies and their affiliates. We point out, again, that the proposed Pennsylvania transaction concerns only competitive local exchange carriers and/or competitive interexchange access carriers. Joint Applicants' capital investments are dictated by the competitive market and not by regulatory commitment. Windstream's Pennsylvania ILECs are not part of the proposed transaction.
- f. At paragraph 24 of its protest, CWA expresses concern with the proposed transfer of competitive residential customers that is the subject of proceedings at Docket Nos. A-2014-2441823, A-2014-2441825 and A-2014-2441826 to a new entity that has no assets or expertise. Competitive telecommunications service by non-facilities based entities is common in the Commonwealth of Pennsylvania. The customers new service entity will focus on service packages, marketing strategies and designing customers service standards catered to the residential market.
- g. At paragraphs 25 through 27 of its protest, CWA expresses concern with the impact of the proposed transaction on state tax collections. The proposed transaction is of limited nature in Pennsylvania. As set forth above, Windstream's Pennsylvania ILECs are not part of the proposed transaction. CWA's concern with a significant impact is not supported.

CONCLUSION

8. In sum, CWA has not demonstrated and, indeed, cannot demonstrate any direct, immediate or substantial interest in the subject matter of this proceeding. It is not the bargaining representative for any employees of Joint Applicants and its involvement in this proceeding is potentially frivolous and harassing. In addition and, as set forth in the separate subsections above, the matters which CWA intends to raise do not support a Commission investigation of the proposed transaction.

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 grant this preliminary objection and dismiss the protest of the Communications Workers of America for lack of standing.

Respectfully submitted,

By: 

Thomas T. Niesen, ID No. 31379
Charles E. Thomas, III, ID No. 201014
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 600
Harrisburg, PA 17101
tniesen@tntlawfirm.com
cet3@tntlawfirm.com

Cesar Caballero
Senior Regulatory Counsel
Windstream Corporation.
4001 Rodney Parham Road
Little Rock, AR 72212
cesar.caballero@windstream.com

Counsel for 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.

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 Preliminary Objection Of Joint Applicants To Protest Of Communications Workers Of America 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.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

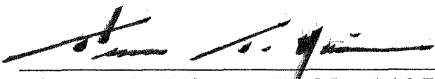
Joint General Rule Application of	:	Docket No. A-2014-2440493
Cavalier Telephone Mid-Atlantic, LLC,	:	Docket No. A-2014-2440526
Intellifiber Networks, Inc., LDMI	:	Docket No. A-2014-2440527
Telecommunications, Inc., McLeodUSA	:	Docket No. A-2014-2440528
Telecommunications Services, LLC,	:	Docket No. 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.	:	

CERTIFICATE OF SERVICE

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

Via Electronic and First Class Mail

Scott J. Rubin, Esquire
333 Oak Lane
Bloomsburg, PA 17815-2036
scott.j.rubin@gmail.com



Thomas T. Niesen, ID No. 31379