



THOMAS, NIESEN & THOMAS, LLC

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June 15, 2020

Via Electronic Filing and Electronic Mail

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
rchiavetta@pa.gov

In Re: PaPUC Docket Nos. A-2020-3020132; A-2020-3020133; A-2020-3020134; A-2020-3020135; A-2020-3020136; A-2020-3020137; A-2020-3020138; A-2020-3020139; A-2020-3020140; A-2020-3020141; A-2020-3020142; A-2020-3020143; A-2020-3020145; A-2020-3020146; A-2020-3020147; A-2020-3020148; A-2020-3020149; A-2020-3020151; A-2020-3020152; A-2020-3020153; A-2020-3020154; A-2020-3020155; A-2020-3020156; A-2020-3020157; A-2020-3020158; A-2020-3020159; A-2020-3020160; A-2020-3020161; A-2020-3020162; and A-2020-3020164

Joint Application of Windstream Holdings, Inc., et al., for Approval of a General Rule Indirect Transfer of Control

Dear Secretary Chiavetta:

We are counsel to Windstream Holdings, Inc., et al., in the above matter and are submitting with this letter responses to the Bureau of Technical Utility Services Data Requests 1 through 17.

Please be aware that the responses to Data Requests 2, 9 and 11 are CONFIDENTIAL AND PROPRIETARY. We are submitting these CONFIDENTIAL AND PROPRIETARY responses to you via electronic mail.

Please contact with me with any questions or if anything further is required in regard to this matter.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By

Thomas T. Niesen

Enclosure

cc: Marie Intrieri, TUS (via email, w/encl.)
Nicole Winters, Esq. (via email, w/encl.)

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- 1. Identify the ultimate parent of each party to the transaction and the valuation of each.**

Response:

As described in the Application, Windstream Holdings, Inc. is a public company and not wholly-owned by any one party. Windstream Holdings, Inc. either directly or indirectly owns 100% of Windstream Services, LLC and each of the Windstream Licensees.

The valuation of Windstream and its subsidiaries can be found in Exhibit D of the Disclosure Statement Relating to the First Amended Joint Chapter 11 Plan of Reorganization, on file with the Bankruptcy Court and attached hereto as Attachment A.

For information regarding the entities that will be acquiring non-controlling minority equity interests in post-emergence Windstream, please see pages 10-12 of the Application.

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3. If not included in the filing, provide the known or anticipated transaction closing date.

Response:

Applicants request that the Commission review and approve as quickly as possible so that Applicants can emerge from bankruptcy no later than August 28, 2020.

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4. Identify all jurisdictions where this or a related transaction has been filed and where approval is being sought. Provide the status of each filing. Distinguish if the filing is an “approval” or a “notice.” If it is an approval, include the date of approval and any conditions imposed. While pending in Pennsylvania, identify any jurisdiction that acts on the transaction and describe the action taken.

Response:

In addition, to the Application pending before the Pennsylvania Public Utility Commission, applications for advance approval of the Transaction have been filed or will shortly be filed with the following agencies:

Federal Communications Commission (Wireline Competition, International and Wireless Telecommunication Bureaus)	Application Pending
California Public Utilities Commission	Notice Pending
Colorado Public Utilities Commission	Application Pending
District of Columbia Public Service Commission	Application Pending
Georgia Public Service Commission	Application Pending
Indiana Utility Regulatory Commission	Notice Forthcoming
Kentucky Public Service Commission	Application Pending
Louisiana Public Service Commission	Notice Forthcoming
Minnesota Public Utilities Commission	Application Pending
Mississippi Public Service Commission	Application Pending
Nevada Public Utilities Commission	Notice Pending
New Jersey Board of Public Utilities	Application Pending
New York Public Service Commission	Application Pending
Ohio Public Utilities Commission	Notice Approved 5/21/2020
South Carolina Public Service Commission	Application Approved 6/10/2020
South Dakota Public Service Commission	Notice Filed
Texas Public Utilities Commission	Application Pending
Virginia State Corporation Commission	Application Pending

Informational notices or, where required, post-closing notices will be provided to the state regulatory commissions in all other states. Applicants will submit updates to this response as application approvals are received.

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5. **If any conditions are under consideration, imposed, or agreed to in any jurisdiction in which this or a related transaction is pending, please update the filing to include that information as it occurs.**

Response:

At this time no conditions have been discussed with the Applicants in any state. Applicants will submit updates to this response should any conditions be considered, imposed, or agreed to in other jurisdictions.

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6. Identify all Pennsylvania-specific impacts known, anticipated, or considered that will or may result in any fashion from the transaction.

Response:

As described in the Application, the Transaction is demonstrably in the public interest. Primarily, the Transaction will facilitate the emergence of Windstream and its subsidiaries, including the Windstream Licensees, from bankruptcy with substantially less debt while at the same time providing compensation to their creditors. Upon emerging from bankruptcy protection as financially stronger competitors, the Windstream Licensees will be well positioned to continue delivery of their comprehensive portfolio of innovative communication solutions to customers in Pennsylvania and across the United States. The Transaction will enhance Windstream's presence in the telecommunications marketplace benefitting existing customers and not harming customers or competitors in any market sector.

The Transaction also ensures continuity of operations for Windstream, including the Windstream Licensees, to the ultimate benefit of its Pennsylvania customers. Windstream's wireline, fixed wireless and broadband customers, whether residential or enterprise and whether served through its ILEC or CLEC operations, will all benefit from continuing to have access to uninterrupted telecommunications and information services. The Windstream Licensees' customers will continue to have the same service providers and will continue to receive substantially the same services and the same rates, terms and conditions of service. The Transaction will result in no disruption to any customer facing operations such as ordering, service installation, customer service, and billing, which will continue to be provided as before.

With far less debt, access to an improved network, and better access to capital, Windstream will accordingly be positioned as a stronger competitor for both the residential and small and medium business markets inside its ILEC footprint and for the enterprise market outside of it. These advances serve the public interest.

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7. **If synergies as to scope or scale or merger savings are posed as a substantial public benefit overall, identify each anticipated synergy or savings. Identify the financial or other value of those synergies/savings and explain how such value was calculated.**

Response:

Not applicable to this Transaction. The Applicants are not proposing any combination or merger of existing operations and therefore there will be no “synergies as to scope or scale or merger savings,” as Windstream understands the question. Note, however, that (as stated in the Application) as a result of the Transaction, Windstream’s overall debt load will be reduced by approximately 50%.

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- 8. Identify whether any of the anticipated benefits of the transaction are anticipated to arise from the loss or potential loss of Pennsylvania jobs, tax revenues, facilities, downsizing, or consolidation that affects Pennsylvania, or any other impact in Pennsylvania.**

Response:

The anticipated benefits of the Transaction set forth in the Application do not arise from any anticipated loss of Pennsylvania jobs, tax revenues, facilities, any downsizing or consolidation or any other negative effects in Pennsylvania.

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10. Identify any functions, operations, or activity of any nature currently performed in or affecting Pennsylvania that may be impacted as a result of the transaction. Specifically, identify any operations that will be eliminated and any impact on Pennsylvania employment.

Response:

The Applicants do not anticipate that the Transaction will result in any changes to any functions, operations, or activity of any nature currently performed or impacting Pennsylvania operations. The Applicants do not anticipate that any operations will be eliminated in Pennsylvania resulting in an impact on Pennsylvania employees. As the Applicants explain above in Response 6, this Transaction is in the public interest and will benefit Pennsylvania customers and employees.

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12. Identify all service markets (e.g., local exchange market, special access market) in Pennsylvania in which each party to the transaction or any affiliates participate. Please use their full name.

Response:

The Windstream Licensees participate in the following service markets under the jurisdiction of the Commission: Local exchange, intrastate long distance, broadband, switched access and special access. None of the entities that will be acquiring ownership equity interests in post-emergence Windstream offers any services subject to the Commission's jurisdiction. An application currently pending before the Federal Communications Commission, if approved, would cause Elliott (which will hold a minority equity interest in post-emergence Windstream) to hold a minority non-controlling equity interest in LogMeIn, Inc., a company whose subsidiary Grasshopper Group, LLC offers interexchange service in Pennsylvania. The Commission approved the transfer of control of Grasshopper Group, LLC in docket A-2020-3018169 on April 30, 2020.

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- 13. Identify all geographic areas in Pennsylvania in which the Applicant(s), affiliates, or any other entities affected by the transaction, offer services.**

Response:

Windstream Licensees offer services in all counties of the Commonwealth.

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- 14. Identify any and all unaffiliated providers offering the same or competitive services as those of the Applicant(s) in the same geographic locales within Pennsylvania. Please use their full name.**

Response:

The ILEC Windstream Licensees, primarily compete with cable companies including Comcast, Armstrong, Atlantic Broadband, Charter, Blue Ridge Communications, Service Electric Cable, and several others.

In CLEC markets, the Applicants primarily compete with the ILECs including Verizon, CenturyLink, Frontier, and Fairpoint.

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- 15. If the transaction is pending before the Federal Communications Commission (FCC), the U.S. Department of Justice (DOJ), or any other federal agency, please provide unexpurgated copies of responses provided to the FCC, DOJ, or other staff inquiries and data requests.**

Response:

Please see Attachment B, which contains supplemental information provided to the FCC on June 11, 2020.

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16. As long as the transaction remains pending before the Commission, provide updates to the status of the transaction or of any changes to the application at the federal level as soon as they occur.

Response:

The Applicants will provide updates to the status of the transaction or of any changes made at the federal level.

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17. **If the proposed transaction involves a foreign interest, describe in detail why state regulatory action on the proposed transaction would not be adverse to national security if DOJ approval remains pending.**

Response:

The Transaction does not involve a foreign interest under review by the DOJ.

As described in the Application, certain Windstream subsidiaries hold FCC wireless licenses and other FCC authorizations that are subject to additional FCC review in the case of foreign entities seeking ownership interests above certain thresholds. To address this, based on FCC precedent for handling such situations, Applicants are using a two-step transaction process with the FCC. Under this two-step process, Windstream will emerge from bankruptcy with the First Lien Investors (as defined in the Application and in filings with the FCC) holding a mix of equity interests and warrants that are below the thresholds that require FCC review or approval of foreign ownership. Then, New Windstream will request FCC approval for the warrant holders to exercise the warrants, which will permit the FCC (and other interested federal agencies) to fully vet the proposed foreign owners. Once that approval is granted, the warrants will be exercised, with the First Lien Investors controlling essentially all of the equity of post-bankruptcy New Windstream.

This Commission's approval of the transaction does not raise any national security concerns for two reasons. First, this transaction does not involve a foreign carrier seeking a controlling interest in a U.S. carrier and does not involve ownership interests being held or controlled by countries with adversarial trade or security relationship with United States. Second, and more importantly, no foreign interests will in fact obtain ownership interests in New Windstream above the levels of concern to the FCC without first obtaining specific advance approval from the FCC for obtaining those interests.

Accordingly, state approval of the present application would not be adverse to national security because during the first step of the process, there are no foreign interests that require further review by the FCC, DOJ or other federal agencies. Any such foreign interests would only be allowed at the second step, following any required review and approval.

Attachment A

Valuation Analysis

Valuation Analysis

THE INFORMATION CONTAINED HEREIN IS NOT A PREDICTION OR GUARANTEE OF THE ACTUAL MARKET VALUE THAT MAY BE REALIZED THROUGH THE SALE OF ANY SECURITIES TO BE ISSUED PURSUANT TO THE PLAN. THE INFORMATION IS PRESENTED SOLELY FOR THE PURPOSE OF PROVIDING ADEQUATE INFORMATION UNDER SECTION 1125 OF THE BANKRUPTCY CODE TO ENABLE THE HOLDERS OF CLAIMS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN TO MAKE AN INFORMED JUDGMENT ABOUT THE PLAN AND SHOULD NOT BE USED OR RELIED UPON FOR ANY OTHER PURPOSE, INCLUDING THE PURCHASE OR SALE OF CLAIMS AGAINST THE DEBTORS OR ANY OF THEIR AFFILIATES.

Solely for the purposes of the Plan and the Disclosure Statement, PJT Partners LP (“PJT”), as restructuring advisors to the Debtors, has estimated a range of total enterprise value (“Enterprise Value”) and implied equity value (“Equity Value”) for the Reorganized Debtors pro forma for the transactions contemplated by the Plan (the “Valuation Analysis”). The Valuation Analysis is based on financial and other information **provided by the Debtors’ management**, as well as the Financial Projections attached to the Disclosure Statement as Exhibit C, and information provided by other sources. The Valuation Analysis is as of April 28, 2020, with an assumed Effective Date in August 2020. The Valuation Analysis utilizes market data as of April 27, 2020. On March 6, 2020 the Debtors filed the Uniti 9019 Motion seeking approval to enter into the Uniti Settlement. The Valuation Analysis assumes that the Uniti Settlement is approved by the Bankruptcy Court and the Enterprise Value presented herein includes the value associated with the Uniti Settlement. The valuation estimates set forth herein represent valuation analyses of the Reorganized Debtors generally based on the application of customary valuation techniques to the extent deemed appropriate by PJT.

In preparing its valuation, PJT performed a variety of financial analyses and considered a variety of factors, including a (a) discounted cash flow analysis; (b) comparable companies analysis; (c) precedent transactions analysis; and (d) the Plan Equity Value, including the 37.5% discount upon which the Backstop Parties have committed to backstop the Rights Offering. The preparation of a valuation analysis is a complex analytical process involving subjective determinations about which methodologies of financial analysis are most appropriate and relevant and the application of those methodologies to particular facts and circumstances in a manner that is not readily susceptible to summary description.

Based on the aforementioned analyses, and other information described herein and solely for purposes of the Plan, the estimated range of Enterprise Value of the Reorganized Debtors, collectively, as of April 28, 2020, is approximately \$3,500 million to approximately \$4,000 million (with the mid-point of such range being \$3,750 million).

In addition, based on the estimated range of Enterprise Value of the Reorganized Debtors and other information described herein and solely for purposes of the Plan, PJT estimated a potential range of total Equity Value of the Reorganized Debtors, which consists of the Enterprise Value, less funded indebtedness, less other long-term liabilities, plus balance sheet cash on the assumed Effective Date. PJT has assumed that the Reorganized Debtors will have a pro forma cash balance of approximately \$75.0 million as of the Effective Date and funded indebtedness of

Capitalized terms not defined herein have the meaning ascribed in the Plan or the Disclosure Statement.

\$2,150 million, \$31 million of capital leases, and \$234 million of pension obligations on a tax affected basis. As discussed further in the Plan, the Requisite Backstop Parties, in consultation with the Debtors, may exercise the Flex Adjustment, which would result in an incremental \$350 million of debt at emergence.

Based upon the estimated range of Enterprise Value of the Reorganized Debtors of between \$3,500 million and \$4,000 million described above, and assuming net debt of \$2,340 million without the Flex Adjustment, PJT estimated that the potential range of Equity Value for the Reorganized Debtors, as of an assumed Effective Date in August 2020, is between approximately \$1,160 million and approximately \$1,660 million (with the mid-point of such range being \$1,410 million). Assuming the Requisite Backstop Parties in consultation with the Debtors exercise the Flex Adjustment, which would result in net debt of \$2,690 million, PJT estimated that the potential range of Equity Value for the Reorganized Debtors, as of an assumed Effective Date in August 2020, is between approximately \$810 million and approximately \$1,310 million (with the mid-point of such range being \$1,060 million).

For purposes of the Valuation Analysis, PJT assumed that no material changes that would affect estimated value occur between the date of filing of the Disclosure Statement and the assumed **Effective Date**. **PJT's Valuation Analysis does not constitute an opinion** as to the fairness from a financial point of view of the consideration to be received or paid under the Plan, of the terms and provisions of the Plan, or with respect to any other matters.

THE VALUATION ANALYSIS REFLECTS WORK PERFORMED BY PJT ON THE BASIS OF INFORMATION IN RESPECT OF THE BUSINESSES AND ASSETS OF THE DEBTORS AVAILABLE TO PJT AS OF APRIL 28, 2020. IT SHOULD BE UNDERSTOOD THAT, ALTHOUGH SUBSEQUENT DEVELOPMENTS MAY HAVE AFFECTED OR **AFFECT PJT'S CONCLUSIONS, PJT DOES NOT HAVE ANY OBLIGATION TO UPDATE, REVISE, OR REAFFIRM ITS VALUATION ANALYSIS AND DOES NOT INTEND TO DO SO.**

PJT DID NOT INDEPENDENTLY VERIFY THE FINANCIAL PROJECTIONS OR OTHER INFORMATION THAT PJT USED IN THE VALUATION ANALYSIS, AND NO INDEPENDENT VALUATIONS OR APPRAISALS OF THE DEBTORS OR THEIR ASSETS WERE SOUGHT OR OBTAINED IN CONNECTION THEREWITH. THE VALUATION ANALYSIS WAS DEVELOPED SOLELY FOR PURPOSES OF THE PLAN AND THE ANALYSIS OF POTENTIAL RELATIVE RECOVERIES TO CREDITORS THEREUNDER. THE VALUATION ANALYSIS REFLECTS THE APPLICATION OF VARIOUS VALUATION TECHNIQUES, DOES NOT PURPORT TO BE AN OPINION AND DOES NOT PURPORT TO REFLECT OR CONSTITUTE AN APPRAISAL, LIQUIDATION VALUE, OR ESTIMATE OF THE ACTUAL MARKET VALUE THAT MAY BE REALIZED THROUGH THE SALE OF ANY SECURITIES TO BE ISSUED OR ASSETS TO BE SOLD PURSUANT TO THE PLAN, WHICH MAY BE SIGNIFICANTLY DIFFERENT THAN THE AMOUNTS SET FORTH IN THE VALUATION ANALYSIS.

THE VALUE OF AN OPERATING BUSINESS IS SUBJECT TO NUMEROUS UNCERTAINTIES AND CONTINGENCIES THAT ARE DIFFICULT TO PREDICT AND WILL FLUCTUATE WITH CHANGES IN FACTORS AFFECTING THE FINANCIAL

CONDITION AND PROSPECTS OF SUCH A BUSINESS. AS A RESULT, THE VALUATION ANALYSIS IS NOT NECESSARILY INDICATIVE OF ACTUAL OUTCOMES, WHICH MAY BE SIGNIFICANTLY MORE OR LESS FAVORABLE THAN THOSE SET FORTH HEREIN. BECAUSE SUCH ESTIMATES ARE INHERENTLY SUBJECT TO UNCERTAINTIES, NEITHER THE DEBTORS, PJT, NOR ANY OTHER PERSON ASSUMES RESPONSIBILITY FOR THEIR ACCURACY. IN ADDITION, THE POTENTIAL VALUATION OF NEWLY ISSUED FUNDED DEBT AND SECURITIES IS SUBJECT TO ADDITIONAL UNCERTAINTIES AND CONTINGENCIES, ALL OF WHICH ARE DIFFICULT TO PREDICT. ACTUAL MARKET PRICES OF SUCH FUNDED DEBT AND SECURITIES AT ISSUANCE WILL DEPEND UPON, AMONG OTHER THINGS, PREVAILING INTEREST RATES, CONDITIONS IN THE FINANCIAL MARKETS, THE ANTICIPATED INITIAL FUNDED DEBT AND SECURITIES HOLDINGS OF PREPETITION CREDITORS, SOME OF WHICH MAY PREFER TO LIQUIDATE THEIR INVESTMENT RATHER THAN HOLD IT ON A LONG-TERM BASIS, THE POTENTIALLY DILUTIVE IMPACT OF CERTAIN EVENTS, INCLUDING THE ISSUANCE OF EQUITY SECURITIES PURSUANT TO THE MANAGEMENT INCENTIVE PLAN, AND OTHER FACTORS THAT GENERALLY INFLUENCE THE PRICES OF FUNDED DEBT.

Management of the Debtors advised PJT that the Financial Projections were reasonably **prepared in good faith and on a basis reflecting the Debtors' best estimates and judgments as to** the future operating and financial performance of the Reorganized Debtors. If the business performs at levels below or above those set forth in the Financial Projections such performance may have a materially negative or positive impact, respectively, on the valuation of the Reorganized Debtors and the Enterprise Value thereof.

In preparing the Valuation Analysis, PJT: (a) reviewed certain historical financial information of the Debtors for recent years and interim periods; (b) reviewed certain financial and **operating data of the Debtors, including the Financial Projections;** (c) **discussed the Debtors' operations and future prospects with the Debtors' senior management team and third-party advisors;** (d) reviewed certain publicly available financial data for, and considered the market value of, public companies that PJT deemed generally relevant in analyzing the value of the Reorganized Debtors; (e) reviewed certain publicly available data for, and considered the market values implied therefrom, recent transactions in the telecommunications industry involving companies comparable in certain respects to the Reorganized Debtors; (f) considered certain economic and industry information that PJT deemed generally relevant to the Reorganized Debtors; (g) considered market feedback received to-date; and (h) conducted such other studies, analyses, inquiries, and investigations as PJT deemed appropriate. PJT assumed and relied on the **accuracy and completeness of all financial and other information furnished to it by the Debtors' management and other parties as well as publicly available information.**

The Valuation Analysis does not constitute a recommendation to any holder of Allowed Claims, or any other person as to how such person should vote or otherwise act with respect to the Plan. PJT has not been requested to, and does not express any view as to, the potential trading value of the **Reorganized Debtors' funded debt** and securities on issuance or at any other time.

For purposes of this Valuation Analysis, because the application of certain tax rules cannot be determined until after the Effective Date (as discussed in greater detail in Article XII of the

Disclosure Statement), PJT utilized certain simplifying assumptions with respect to the tax attributes of the Reorganized Debtors. In particular, PJT: (a) assumed that no net operating loss **carryforwards (“NOLs”)** would survive the application of the cancellation of indebtedness rules; (b) utilized historic depreciation and amortization schedules without taking into account any **reduction in the tax basis of the Reorganized Debtors’ assets that may occur pursuant to the Restructuring Transactions**; (c) assumed that **the Reorganized Debtors will claim “bonus depreciation” with respect to certain capital expenditures**; and (d) assumed that certain laws with respect to the deductibility of interest expense and bonus depreciation will not change. The Valuation Analysis does not otherwise evaluate the tax implications of the Plan, including either a Recapitalization Transaction or NewCo Transaction (each as defined in Article XII of the Disclosure Statement), **on the Reorganized Debtors’ projections**. Further, PJT did not estimate the value of any potential tax attributes that may survive the Restructuring Transactions, including NOLs or carryforwards under section 163(j) of the Internal Revenue Code. Any changes to the assumptions on the availability **of tax attributes, the amount of the Reorganized Debtors’ tax basis, or the impact of cancellation of indebtedness income on the Reorganized Debtors’ projections** could materially impact the conclusions reached in the Valuation Analysis

THE SUMMARY SET FORTH ABOVE DOES NOT PURPORT TO BE A COMPLETE DESCRIPTION OF THE VALUATION ANALYSIS PERFORMED BY PJT. THE PREPARATION OF A VALUATION ANALYSIS INVOLVES VARIOUS DETERMINATIONS AS TO THE MOST APPROPRIATE AND RELEVANT METHODS OF FINANCIAL ANALYSIS AND THE APPLICATION OF THESE METHODS IN THE PARTICULAR CIRCUMSTANCES AND, THEREFORE, SUCH AN ANALYSIS IS NOT READILY SUITABLE TO SUMMARY DESCRIPTION. THE VALUATION ANALYSIS PERFORMED BY PJT IS NOT NECESSARILY INDICATIVE OF ACTUAL VALUES OR FUTURE RESULTS, WHICH MAY BE SIGNIFICANTLY MORE OR LESS FAVORABLE THAN THOSE DESCRIBED HEREIN.

PJT IS ACTING AS RESTRUCTURING ADVISORS TO THE DEBTORS, AND HAS NOT AND, WILL NOT BE RESPONSIBLE FOR, AND HAS NOT AND WILL NOT PROVIDE ANY TAX, ACCOUNTING, ACTUARIAL, LEGAL, OR OTHER SPECIALIST ADVICE TO **THE DEBTORS OR ANY OTHER PARTY IN CONNECTION WITH THE DEBTORS’ CHAPTER 11 CASES, THE PLAN OR OTHERWISE.**

Attachment B

Supplemental Information Filed with the FCC

June 12, 2020

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, DC 20554

Re: *Windstream Holdings, Inc., Debtor-in-Possession, Transferor, and Windstream Holdings, Inc., Transferee, Application for Consent to Transfer Control of Domestic and International Section 214 Authorizations*, WC Docket No. 20-151, IB File Nos. ITC-T/C-20200522-00081, ITC-T/C-20200522-00082, ITC-T/C-20200522-00083

Dear Ms. Dortch:

The parties to the above-referenced transfer of control Applications, at the request of Commission staff, hereby supplement their Applications to provide additional information on overlap of certain operations between (1) Windstream Services, LLC and its subsidiaries (“Windstream”) and (2) companies in which the new disclosable interest holders hold a direct or indirect ownership interest of 10% or more. Specifically, staff requested information on overlaps of incumbent local exchange company (“ILEC”) or competitive local exchange company (“CLEC”) operations and any service providers delivering last mile fiber facilities to customers in metropolitan areas.

The new disclosable interest holders (collectively, the “New Owners”) in the proposed transaction are (1) Elliott Management Corporation and its advisory affiliates, including Elliott Investment Management, L.P. (collectively, “Elliott”) and (2) Franklin Management Advisers, LLC (“Franklin”).¹ Neither of these entities currently hold disclosable interests in a provider that overlaps with Windstream’s operations.² However, Elliott is currently seeking Commission

¹ Each of which will hold their respective interests as described in the Applications. *See Windstream Holdings, Inc., Debtor-in-Possession, and Windstream Services, LLC, Description of Proposed Transaction and Public Interest Statement* (filed May 21, 2020) at 4-6 (“Public Interest Statement”).

² The transaction is structured as a two-step process, with the Commission approving the proposed transfer of control to facilitate Windstream’s emergence from bankruptcy in the first step, and then approving a petition for declaratory ruling to allow aggregate foreign ownership to exceed 25% and approving specific foreign ownership interests in excess of 5% in the second step. After the second step, Franklin will no longer be a disclosable interest holder, but Pacific Investment Management Company LLC (“PIMCO”) will be. *See* Public Interest Statement at 10-

approval for a minority investment in LogMeIn, Inc. and its wholly-owned subsidiaries GetGo Communications, LLC, GetGo Communications Virginia LLC, Grasshopper Group, LLC, LogMeIn Audio LLC, and Jive Communications, Inc. (collectively “LogMeIn”), which has some minor potential overlaps with Windstream’s operations, as discussed below.³

LogMeIn owns limited physical facilities for providing CLEC services and relies almost exclusively on agreements with other carriers to provide equipment and facilities for CLEC services. GetGo Communications LLC (and its local Virginia subsidiary, GetGo Communications Virginia LLC), are LogMeIn’s only operating subsidiaries with facilities-based CLEC authorizations or designations. Both subsidiaries provide telephony services to LogMeIn and do not have any retail customers or retail operations.

Through equipment agreements, GetGo Communications LLC acts as a competitive local exchange and interexchange carrier authorized to provide intrastate local, intrastate interexchange, and switched access services in San Francisco, CA, Los Angeles, CA, San Diego, CA, Miami/Southeast Florida, Atlanta, GA, Chicago, IL, Baltimore, MD, Eastern Massachusetts, New York City Metro, Dallas, TX, Houston, TX, Washington DC, and Culpeper, VA.⁴ LogMeIn considers the preceding LATAs to be its local markets, based on the fact that it holds Operating Company Number authorizations for each of those regions.

The fiber networks and businesses of Windstream and the CLEC operations of LogMeIn are generally complementary and adjacent with minimal overlap, as described below.

- San Francisco, CA, Los Angeles, CA, San Diego, CA. Windstream does not operate as an ILEC in these areas. There is no overlap between LogMeIn’s CLEC operations and any Windstream-owned fiber or CLEC operations.

12, Exhibit B. For the Commission’s future reference, PIMCO does not hold 10% or more of any ILEC, CLEC or service provider that engages in fiber delivery, so neither step of the proposed transaction will result in any overlapping interests.

³ Applications currently pending before the Commission, if approved, would result in Elliott holding a non-controlling but disclosable 49% minority interest in LogMeIn, a provider of web conferencing and web event platforms and services that holds telecommunications authorizations issued by the Commission and various state regulators. See ECFS Docket No. 19-396; IB File Nos. ITC-T/C-20191230-00203, ITC-T/C-20191230-00204, ITC-T/C-20191230-00205, ITC-T/C-20191230-00206; *Joint Domestic and International Section 214 Application Filed for the Transfer of Control LogMeIn, Inc. from its current shareholders to Logan Parent LLC.*

⁴ Both Windstream and LogMeIn provide nationwide Unified Communications as a Service (“UCaaS”) but the UCaaS marketplace is in any event highly competitive and represents only a small portion of Windstream’s current business. Specifically, LogMeIn provides software-as-a-service products which are offered nationwide, including its GoToMeeting/GoToWebinar/GoToTraining, OpenVoice, and Call Me/Toll Free Audio products. LogMeIn utilizes its CLEC services to provide access to audio bridges via the PSTN to facilitate audio conferences for many of these products. A LogMeIn CLEC is only providing the numbers for dial-ins in the LATAs identified; LogMeIn utilizes tandem homing agreements with third-party carriers for phone-numbers for audio conferencing and bridging outside of those areas.

- Miami, FL/Southeast Florida. Windstream does not operate as an ILEC in this area. Windstream owns a limited amount of fiber supporting its CLEC operations in this area.
- Atlanta, GA. There is, potentially, some geographic overlap between LogMeIn's CLEC operations and Windstream ILEC operations and ILEC-supporting owned fiber in the Atlanta area; Windstream operates as an ILEC in a number of small communities and rural areas within LATA 438, in the area generally north and northeast of Atlanta, towards the Tennessee border. In addition, Windstream owns a limited amount of fiber supporting its long-haul transport network in the region.⁵
- Chicago, IL. Windstream does not operate as an ILEC in this area. Windstream owns a limited amount of fiber supporting its long-haul transport network and is used to support CLEC operations in this area.
- Eastern Massachusetts. Windstream does not operate as an ILEC in this area. There is no overlap between LogMeIn's CLEC operations and any Windstream-owned fiber or CLEC operations in this area.
- Baltimore, MD. Windstream does not operate as an ILEC in this area. Windstream owns a limited amount of fiber supporting its long-haul transport network in this area.
- New York, NY. Windstream does not operate as an ILEC in this area. Windstream owns a small amount of fiber supporting its long-haul transport network in the region.
- Dallas, TX. There is, potentially, some geographic overlap between LogMeIn's CLEC operations and Windstream ILEC operations and ILEC-supporting owned fiber in the Dallas area; Windstream operates as an ILEC in a number of small communities and rural areas within LATA 552 (Dallas) and some adjacent LATAs, generally to the south and east of Dallas. In addition, Windstream owns a limited amount of fiber supporting its long-haul transport network in the region.
- Houston, TX. There is, potentially, some geographic overlap between LogMeIn's CLEC operations and Windstream ILEC operations and ILEC-supporting owned fiber in the Houston area; Windstream operates as an ILEC in some smaller communities in the area. In addition, Windstream owns a small amount of fiber supporting its long-haul transport network in the region.

⁵ Such non-ILEC/CLEC fiber is in support of the Windstream transport network as well as supplying wave services, outgoing dark fiber IRUs, dedicated TDM or other high capacity circuits

Letter to Marlene H. Dortch

June 12, 2020

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- Washington, DC and Culpeper, VA. Windstream does not operate as an ILEC in this area. Windstream owns a small amount of fiber supporting its long-haul transport network in the region.

Please let us know if you would like any additional information.

Respectfully submitted,

/s/ Christopher W. Savage

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June 11, 2020

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, DC 20554

Re: *Windstream Holdings, Inc., Debtor-in-Possession, Transferor, and Windstream Holdings, Inc., Transferee, Application for Consent to Transfer Control of Domestic and International Section 214 Authorizations, WC Docket No. 20-151; IB File Nos. ITC-T/C-20200522-00081, ITC-T/C-20200522-00082, ITC-T/C-20200522-00083; ULS File Nos. 0009081087, 0009082139, 0009082351, 0009082392, 0009082434, 0009082528, 0009085568, 0009085592, 0009085614*

Dear Ms. Dortch:

This letter is submitted on behalf of the parties to the above-referenced transfer of control applications (“Windstream Transfer of Control Applications”) to clarify their pending request for waiver of the Commission’s processing rules submitted in connection with these applications. At the request of Commission staff, the attached Petition for Temporary and Limited Waiver is being filed contemporaneously via IBFS with respect to the pending international Section 214 transfer of control applications identified above. The parties request that the language of this Petition also be substituted for the waiver request contained in the exhibit to its original application filed May 21, 2020. *See* Windstream Transfer of Control Applications, “Description of Proposed Transaction and Public Interest Statement,” at 18-23.

The revised waiver provides two principal clarifications. First, it makes plain that there are two separate types of special warrants that will be issued at Step One of the transaction. At page one of the attached Petition, the parties explain that “To achieve the necessary level of indirect foreign equity and voting interests at Step One, some investors will own warrants in New Windstream, and some investors, including foreign affiliates of Elliott and Brigade Capital Management, LP, will own warrants in their own U.S. affiliates.” *See also* Section II at 5. Thus there will be two separate types of special warrants, those issued by New Windstream, and those issued by certain investors in New Windstream. Both of these types of warrants will be subject to the Petition for Declaratory Ruling filed at Step Two to permit their exercise pursuant to requests for specific approval.

Second, at pages three to four, the revised waiver request clarifies that it seeks deferral of Commission consideration of the pre-paid warrants at Step One because if the Commission were to treat such warrants as equity in its initial review of the proposed New Windstream ownership, “that decision could place New Windstream in the position of having foreign ownership in

Ms. Marlene H. Dortch
June 11, 2020
Page 2

excess of the relevant foreign ownership limits specified in 47 U.S.C. § 310(b)(4) and trigger a significantly lengthier and immediate review of these ownership interests.” By deferring consideration of the special warrants to Step Two, in the context of a Petition for Declaratory Ruling to permit their exercise, the Commission will allow New Windstream to emerge quickly from bankruptcy, which can be expected to benefit both the company and its customers.

Please contact the undersigned if you have any questions regarding this matter.

Respectfully submitted,

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
Windstream Holdings, Inc.,)	WC Docket No. 20-151
Debtor-in-Possession)	
Transferor)	ISP-WAV-202006__ - _____
)	
and)	
)	
Windstream Holdings, Inc.)	
Transferee)	
)	
Applications for Consent to Transfer of Control)	
of Licenses and Authorizations)	
)	

PETITION FOR TEMPORARY AND LIMITED WAIVER

The Applicants in the above-captioned transfer of control applications request—to the extent required—a waiver of certain Commission rules and processing policies to seek approval of the transfer of control of Windstream as a two-step process.¹ In Step One, certain parties eligible to obtain equity under the Plan of Reorganization would be issued special warrants sufficient to ensure that, following the completion of Step One, (1) no non-U.S. person or entity directly or indirectly holds a ten percent or greater voting or equity interest in New Windstream and (2) the aggregate foreign equity and voting interests in New Windstream would remain below the 25% threshold under Section 310(b) of the Act. To achieve the necessary level of indirect foreign equity and voting interests at Step One, some investors will own warrants in

¹ The definitions of all defined terms appear in the Public Interest Statement accompanying the related transfer of control applications. *See, e.g.*, Windstream Transfer of Control Applications, “Description of Proposed Transaction and Public Interest Statement,” IB File Nos. ITC-T/C-20200522-00081, ITC-T/C-20200522-00082, ITC-T/C-20200522-00083.

New Windstream, and some investors, including foreign affiliates of Elliott and Brigade Capital Management, LP, will own warrants in their own U.S. affiliates.

In Step Two of the transaction, the Applicants would file, no later than thirty days following emergence from bankruptcy, a Petition for Declaratory Ruling effectively seeking Commission approval to permit exercise of the special warrants issued at Step One. The Step Two Petition would include requests for specific approval of each foreign-owned investor that would have sufficient post-exercise voting or equity ownership stakes in New Windstream to require approval. The Petition would also seek advance approval for New Windstream to be up to 100% foreign owned in the aggregate, consistent with the Commission's rules governing such requests.

As explained above, this two-step process would allow New Windstream, Windstream, and their subsidiaries to emerge expeditiously from bankruptcy and avoid the adverse consequences that could result from a delay in implementing the Plan of Reorganization. Operating as a debtor-in-possession imposes significant financial and operational burdens on Windstream, such as a potential need to incur additional indebtedness to maintain liquidity. A prompt emergence from bankruptcy will allow the company to resume normal operations and will have significant public interest benefits, including providing even greater assurance of continuity of service to customers.

I. Background

The Commission has historically refrained from considering pre-paid warrants as present interests for calculating ownership in Commission-regulated entities, a position consistently adhered to in cases covering myriad types of Commission licenses subject to the limitations on foreign ownership under Section 310(b) of the Communications Act. Accordingly, it is well-

established that “an option held by an alien to buy stock in a licensee or the parent of a licensee is not cognizable until exercised.”² Indeed, the notes to the current rules governing petitions for declaratory ruling under Section 310(b) provide that in “calculating foreign equity and voting interests, the Commission does not consider convertible interests such as options, warrants and convertible debentures until converted, *unless specifically requested by the petitioner, i.e.,* where the petitioner is requesting approval so those rights can be exercised in a particular case *without further Commission approval.*”³

However, at the suggestion of Commission staff, Applicants seek this temporary and limited waiver should it be necessary with respect to the Commission’s treatment of the special warrants. If the Commission were to treat the pre-paid warrants as equity in the context of reviewing the proposed New Windstream ownership, that decision could place New Windstream in the position of having foreign ownership in excess of the relevant foreign ownership limits specified in 47 U.S.C. § 310(b)(4) and trigger a significantly lengthier and immediate review of these ownership interests. A Commission undertaking of this longer review prior to the emergence of Windstream from bankruptcy protection would impose substantial burdens on the company and its customers, as well as the Applicants. By deferring this more extensive review

² See *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 6569 (1991). See also *Stratos Global Corp. and Robert M. Franklin*, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 21328, 21361, ¶ 78 (2007) (“The Commission has long held that future interests such as warrants, options and convertible debt do not constitute capital stock until exercised or converted and, thus, are not relevant to the foreign ownership analysis”); *Tribune Company and its Licensee Subsidiaries, Debtors in Possession, et al.*, Memorandum Opinion and Order, 27 FCC Rcd 14239, 14245 n.32 (MB 2012); *NextWave Personal Communications, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 2030, 2051, ¶ 46 (WTB 1997); *BBC License Subsidiary, L.P.*, Memorandum Opinion and Order, 10 FCC Rcd 10968, 10973 n.12, citing *Univision Holdings, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 6672, 6674, ¶ 8 (1992), *recon. denied*, 8 FCC Rcd 3931 (1993).

³ 47 C.F.R. §1.5001(i), Note to paragraph (i)(3)(ii)(A) (emphases added).

to Step Two of the proposed two-step process, in the context of a Petition for Declaratory Ruling to permit exercise of the special warrants, the public will benefit from Windstream's early emergence from bankruptcy, while the Commission will maintain the ability to review thoroughly the proposed ownership during Step Two. In recent cases, three different Bureaus have granted two specific requests for waiver of Commission Rules governing transfers of control of domestic and international Section 214 authorizations, as well as broadcast and common carrier Title III licenses subject to Section 310(b) of the Communications Act, for the specific purpose of permitting a two-step approval process like that contemplated here.⁴ These waivers allowed companies to emerge from bankruptcy without considering interests convertible to equity in step one, but conditioned grant of the waivers upon deferring review of these interests to an immediate second-stage of review.

Delayed consideration of certain potential foreign ownership stakes is warranted to permit a regulatee subject to Section 214 transfer of control review and/or Section 310(b) ownership limits to emerge quickly from bankruptcy without the need for protracted regulatory review of non-U.S. ownership stakes. The equitable powers and role of the Bankruptcy Court in overseeing the Chapter 11 process provide a critical distinction from cases in which warrants are issued in a negotiated private license acquisition. Such was the case in each of the two waiver requests noted above that were granted in order to allow two-step review, permitting early emergence from bankruptcy.

⁴ See *Fusion Connect Notice*, 35 FCC Rcd at 413; *Lieberman Order*, 34 FCC Rcd at 8551, ¶16 (both permitting a two-step process using an initial distribution of special warrants in lieu of equity that advances the public interest by permitting licensees to emerge from bankruptcy and begin normal operations more quickly than would otherwise be possible).

II. Justification for Waiver

This Application implicates the same basic set of facts as the waiver decisions discussed above: like those applicants, Windstream seeks to emerge from bankruptcy pursuant to a plan expected to receive court approval in the near term.⁵ The special warrants to be issued upon emergence at Step One, both in New Windstream and in certain of its investors, will allow the holders to purchase equity directly in New Windstream arising out of those warrants, or to hold equity interests in certain New Windstream investors arising out of those warrants, only after all necessary Commission approvals have been granted in Step Two.

The foreign interests that will be considered at Step Two are the types of foreign interests in U.S. Title III licensees and Section 214 authorization holders that the Commission routinely approves following appropriate regulatory review. They are German and Canadian investors in well-established U.S.-based investment management companies and investment vehicles established under the laws of nations like Bermuda and the Cayman Islands. These kinds of investments, from countries with long-standing productive relationships with the United States and important trade and security partners, are commonplace.

This is not a circumstance where a foreign carrier seeks a controlling interest in a U.S. carrier or where ownership interests would be held or controlled by countries with an adversarial trade or security relationship with the United States. Thus, while the foreign ownership interests

⁵ See, e.g., *Liberian Order*, 34 FCC Rcd at 8550, ¶14 (“It is the Commission’s longstanding practice to accommodate federal bankruptcy law when doing so will not unduly interfere with its public interest obligations under the Act”).

can be fully vetted prior to the closing of Step Two, there should be no concern about allowing Step One to proceed before that review is completed.⁶

Enabling a prompt emergence from bankruptcy will also lead to significant and immediate public interest benefits. As the Commission has found, facilitating successful and timely emergence from bankruptcy “advances the public interest by providing economic and social benefits, especially including the compensation of innocent creditors.”⁷ In addition, allowing Windstream to emerge from bankruptcy will enable New Windstream to focus entirely on improving service to its customers. The net result is clear: the expedited emergence of Windstream and its subsidiaries from bankruptcy with substantially less debt and improved operational arrangements will preserve current service to customers and foster greater near-term competition in local markets for telecommunications services across the country.⁸

⁶ See, e.g., *Liberian Order*, 34 FCC Rcd at 8550, ¶ 14 (“[G]rant of the waiver effectively provides interim Section 310(b)(4) authority only, in order to enable the prompt emergence of the LBI Debtors from bankruptcy, while preserving the Commission’s ability to review and rule on LBI’s foreign ownership following such emergence”), citing *Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications Inc.*, Order, 23 FCC Rcd 4436, 4444, ¶ 18 (2008) (granting the petitioners authority to hold on an interim basis up to a non-controlling 49.99% equity and voting interest in SkyTerra Communications subject to and without prejudice to any action the Commission may take on the associated request for permanent authority). See also *Fusion Connect Notice*, 35 FCC Rcd at 413.

⁷ *Fusion Connect Notice*, 35 FCC Rcd at 413 (quoting *WorldCom/MCI Order*, 18 FCC Rcd at 26503, ¶29 (2003)). See also *LaRose v. FCC*, 494 F.2d at 1146, n.2 (stating that in applying its policies where an application arises from bankruptcy, the Commission should consider “the public interest in the protection of innocent creditors”).

⁸ See, e.g., *Liberian Order*, 34 FCC Rcd at 8551, ¶ 15 (“[P]rompt grant of the Applications, subject to waiver, will expedite LBI Debtors’ emergence from bankruptcy and facilitate operational improvements made possible by new ownership.”).

III. Request for Relief

The Commission may waive any of its rules if “good cause” is demonstrated.⁹ In general, waiver is appropriate if (1) special circumstances warrant a deviation from the general rule; and (2) such deviation would better serve the public interest than would strict adherence to the rule.¹⁰ The Commission will grant a waiver of its rules in a particular case upon a showing that the relief requested will not undermine the policy objective of the rule in question and will otherwise serve the public interest.¹¹ In determining whether waiver is appropriate, it is well-established that the Commission should “take into account considerations of hardship, equity, or more effective implementation of overall policy.”¹²

Each of these factors applies in this case. As detailed in the foregoing section, favorable action will produce both public and private benefits by promoting competition and consumer welfare. In contrast, delaying Windstream’s emergence from bankruptcy would impose significant hardships on the Applicants and could have an adverse impact both on Windstream customers and on competition in markets in which Windstream operates.

Accordingly, to the extent required to expedite initial review and permit a two-step approval process, the Applicants seek a temporary and limited waiver of Sections 1.5000(a)(1), 1.948, 1.2112, 63.03, 63.04, 63.18, and 63.24 of the Commission’s Rules to the extent that any of these rules might require immediate scrutiny of pre-paid warrants contemporaneously with

⁹ See 47 C.F.R. § 1.3; *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

¹⁰ See *Northeast Cellular*, 897 F.2d at 1166.

¹¹ See *WAIT Radio*, 418 F.2d at 1157.

¹² *Id.* at 1159.

approval of present equity interests in Windstream that would exist at emergence. Applicants understand that such a waiver will be conditioned on filing of a Petition for Declaratory Ruling seeking approval to exercise the special warrants in Step Two of the proposed transaction within 30 days of Windstream's emergence from bankruptcy.¹³

¹³ See *Fusion Connect Notice*, 35 FCC Rcd at 413-14 (granting the applications and waiver requests “conditioned upon the filing, no later than 30 days after closing the transaction authorized by such grant, of a Petition for Declaratory Ruling to exceed the aggregate foreign ownership benchmark set forth in section 310(b)(4) of the Act...”). Unlike the circumstance in *Fusion Connect*, the circumstances here require only a Petition for Declaratory Ruling at Step Two as no entity will gain control at either step of the transaction; in *Fusion Connect*, the entity obtaining control at step one was divested of control at step two.

IV. Conclusion

For the foregoing reasons, the Applicants respectfully request that the Commission grant a temporary, limited waiver of its processing rules to allow the two-step processing approach described here and in the Windstream transfer of control applications.

Respectfully submitted,

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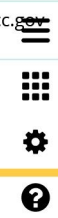
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Attorney/Author Name(s)	Christopher W. Savage, Samuel L. Feder, David S. Keir
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06/11/2020

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Verification

I, Kristi Moody, Executive Vice President – General Counsel & Corporate Secretary of Windstream Holdings, Inc. and its subsidiaries, hereby state that the facts above set forth 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).

Date: June 15th, 2020



Kristi Moody
Executive Vice President – General
Counsel & Corporate Secretary
Windstream Holdings, Inc.



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