



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET
HARRISBURG, PENNSYLVANIA 17120

October 7, 2024

Docket Nos. A-2024-3049628; A-2024-3049631; A-2024-3049632;
A-2024-3049633; A-2024-3049634; A-2024-3049635;
A-2024-3049636; A-2024-3049637; A-2024-3049638;
A-2024-3049639; A-2024-3049640; A-2024-3049641;
A-2024-3049642; A-2024-3049643; A-2024-3049648;
A-2024-3049649; A-2024-3049650; A-2024-3049651;
A-2024-3049652; A-2024-3049653; A-2024-3049654;
A-2024-3049655; A-2024-3049656; A-2024-3049657;
A-2024-3049658; A-2024-3049659; A-2024-3049660

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RE: Joint Application of Windstream Holdings II, LLC; *et al.* for Approval of an
Internal Reorganization

Dear Attorney Stoner:

On June 14, 2024, Windstream Holdings II, LLC (“Windstream Holdings” or the “Company”) on behalf of its subsidiary New Windstream, LLC (“New Windstream” or the “Transferee”); A.R.C. Networks, Inc. (“A.R.C.”), American Telephone Company LLC (“American”), ATX Licensing, Inc. (“ATX”), Broadview Networks, Inc. (“Broadview Networks”), Broadview NP Acquisition Corp. (“Broadview NP”), Business Telecom LLC (“Business Telecom”), Cavalier Telephone Mid-Atlantic, LLC (“Cavalier”), Choice One Communications of Pennsylvania, Inc. (“Choice One”), CTC Communications Corp. (“CTC”), DeltaCom, LLC (“DeltaCom”), Intellifiber Networks, LLC (“Intellifiber”), LDMI Telecommunications, LLC (“LDMI”), Lightship Telecom, LLC (“Lightship”), MassComm, LLC (“MassComm”), McLeodUSA Telecommunications Services, LLC (“McLeodUSA”), PAETEC Communications, LLC (“PAETEC”), Talk America, LLC (“Talk America”), US LEC of Pennsylvania, LLC (“US LEC”), Windstream Buffalo Valley, Inc. (“Windstream Buffalo”), Windstream Communications, LLC (“Windstream Communications”), Windstream Conestoga, Inc. (“Windstream Conestoga”), Windstream D&E Systems, Inc. (“Windstream D&E Systems”), Windstream D&E, Inc. (“Windstream D&E”), Windstream KDL, LLC (“Windstream KDL”), Windstream New Edge, LLC (“Windstream New Edge”),

Windstream Norlight, LLC (“Windstream Norlight”), and Windstream Pennsylvania, LLC (“Windstream Pennsylvania”)(collectively, the “Windstream Licensees”)(together with Windstream Holdings and New Windstream, “Windstream” or the “Joint Applicants”) filed a joint application pursuant to the Pennsylvania Public Utility Code (Code), 66 Pa. C.S. §§ 1102-1103, the Commission’s Statement of Policy regarding Utility Stock Transfers at 52 Pa. Code § 69.901, and its Abbreviated Procedures for Review of Transfer of Control of Telecommunications Public Utilities at 52 Pa. Code §§ 63.321 – 63.325. The Joint Applicants are seeking approval of a transfer of indirect control of the Company to New Windstream (the “Reorganization”). The joint application was filed as a general rule transaction under 52 Pa. Code § 63.324(a)(2) because it will transfer more than 20% of the direct or indirect control of the Company.

Pursuant to 52 Pa. Code § 5.14, relating to applications requiring notice, the notice was published in the *Pennsylvania Bulletin* on July 6, 2024, at 54 *Pa.B.* 3860 with a protest period ending, July 22, 2024. Additionally, the Joint Applicants served copies of the joint application upon the Office of Small Business Advocate, the Office of Consumer Advocate, and the Commission’s Bureau of Investigation and Enforcement. Further notice was not required, and no protests or comments have been received.

Windstream Holdings is a Delaware limited liability holding company with its principal place of business located at 4005 North Rodney Parham Road, Little Rock, AR 72212. Windstream’s operating subsidiaries offer services in all 50 states and the District of Columbia.¹ In Pennsylvania, Windstream’s incumbent local exchange carrier (“ILEC”) subsidiaries² offer residential and small business services while its competitive local exchange carrier (“CLEC”) subsidiaries offer business and enterprise services.³

A.R.C., a New York corporation, is authorized in the Commonwealth of Pennsylvania to provide CLEC services pursuant to certificates granted at Docket No. A-310448F0003.⁴

American, a New York limited liability company, is authorized in the Commonwealth of Pennsylvania to provide CLEC and resold interexchange (“IXC-R”) services pursuant to Commission authority at Docket Nos. A-2009-2093403, A-2009-2093404, and A-2009-2093405.⁵

¹ Joint Application at 4.

² Joint Application at 4. Windstream’s ILECs offer services only in Alabama, Arkansas, Florida, Georgia, Iowa, Kentucky, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, New York, North Carolina, Ohio, Oklahoma, South Carolina, and Texas in addition to Pennsylvania.

³ Joint Application at 4.

⁴ Joint Application at 5.

⁵ Joint Application at 4-5.

ATX, a Delaware corporation, is authorized in the Commonwealth of Pennsylvania to provide CLEC and IXC-R services pursuant to Commission authority at Docket Nos. A-310992 and A-310992F0002.⁶

Broadview Networks, a New York corporation, is authorized in the Commonwealth of Pennsylvania to provide interexchange (“IXC”), IXC-R, competitive access (“CAP”), and CLEC services pursuant to Commission authority at Docket Nos. A-310932, A-310932F0002, A-310932F0003, and A-310932F0004.⁷

Broadview NP, a Delaware corporation, is authorized in the Commonwealth of Pennsylvania to provide IXC, IXC-R, CAP, and CLEC services pursuant to Commission authority at Docket Nos. A-311188, A-311188F0002, and A-311188F0003.⁸

Business Telecom, a North Carolina limited liability company, is authorized in the Commonwealth of Pennsylvania to provide CLEC, IXC-R, and IXC services pursuant to Commission authority at Docket Nos. A-310092, A-310092F0002, A-310092F0004, and A-2015-2478267.⁹

Cavalier, a Delaware limited liability company, is authorized in the Commonwealth of Pennsylvania to provide CLEC, IXC, IXC-R, and CAP services pursuant to Commission authority at Docket No. A-310838.¹⁰

Choice One, a Delaware corporation, is authorized in the Commonwealth of Pennsylvania to provide CLEC, IXC, IXC-R, and CAP services pursuant to certificates granted at Docket Nos. A-310781 and A-310781F0002.¹¹

CTC, a Massachusetts corporation, is authorized in the Commonwealth of Pennsylvania to provide CLEC, IXC, IXC-R, and CAP services pursuant to Commission authority at Docket Nos. A-310295, A-310295F0002, and A-310295F0003.¹²

DeltaCom, an Alabama limited liability company, is authorized in the Commonwealth of Pennsylvania to provide IXC-R services pursuant to Commission authority at Docket Nos. A-310467 and A-2012-2326256.¹³

⁶ Joint Application at 5.

⁷ Joint Application at 5.

⁸ Joint Application at 5.

⁹ Joint Application at 5.

¹⁰ Joint Application at 5.

¹¹ Joint Application at 5.

¹² Joint Application at 5-6.

¹³ Joint Application at 6.

Intellifiber, a Virginia corporation, is authorized in the Commonwealth of Pennsylvania to provide CLEC, IXC, IXC-R, and CAP services pursuant to Commission authority at Docket No. A-311102.¹⁴

LDMI, a Michigan limited liability company, is authorized in the Commonwealth of Pennsylvania to provide IXC services pursuant to Commission authority at Docket No. A-310538.¹⁵

Lightship Telecom, a Delaware limited liability company, is authorized in the Commonwealth of Pennsylvania to provide CLEC, IXC, IXC-R, and CAP services pursuant to certificates granted at Docket Nos. A-310943, A-310943F0002, A-310943F0003, and A-310943F0004.¹⁶

MassComm, a New York corporation, is authorized in the Commonwealth of Pennsylvania to provide CLEC and IXC-R services pursuant to Commission authority at Docket Nos. A-2008-2046390, A-2008-2046392, and A-2008-2046394.¹⁷

McLeodUSA, an Iowa limited liability company, is authorized in the Commonwealth of Pennsylvania to provide IXC and IXC-R services pursuant to Commission authority at Docket No. A-310456.¹⁸

PAETEC, a Delaware corporation, is authorized in the Commonwealth of Pennsylvania to provide CLEC, IXC, IXC-R, and CAP services pursuant to Commission authority at Docket No. A-310743.¹⁹

Talk America, a Delaware limited liability company, is authorized in the Commonwealth of Pennsylvania to provide CLEC, IXC, and IXC-R services pursuant to Commission authority at Docket No. A-310018.²⁰

US LEC, a North Carolina limited liability company, is authorized in the Commonwealth of Pennsylvania to provide CLEC, IXC, and IXC-R services pursuant to Commission authority at Docket No. A-310814.²¹

Windstream Buffalo, a Pennsylvania corporation, is authorized in the Commonwealth of Pennsylvania to provide services as an ILEC pursuant to Commission authority at Docket No. A-310369.²²

¹⁴ Joint Application at 6.

¹⁵ Joint Application at 6.

¹⁶ Joint Application at 6.

¹⁷ Joint Application at 6.

¹⁸ Joint Application at 6.

¹⁹ Joint Application at 6.

²⁰ Joint Application at 6.

²¹ Joint Application at 6-7.

²² Joint Application at 7.

Windstream Communications, a Delaware corporation, is authorized in the Commonwealth of Pennsylvania to provide CLEC, IXC, IXC-R, and CAP services pursuant to Commission authority at Docket No. A-310325.²³

Windstream Conestoga, a Pennsylvania corporation, is authorized in the Commonwealth of Pennsylvania to provide services as an ILEC pursuant to Commission authority at Docket No. A-310850.²⁴

Windstream D&E Systems, a Delaware corporation, is authorized in the Commonwealth of Pennsylvania to provide CLEC, IXC-R, and CAP services pursuant to Commission authority at Docket No. A-310738.²⁵

Windstream D&E, a Pennsylvania corporation, is authorized in the Commonwealth of Pennsylvania to provide ILEC, IXC, and CAP services pursuant to Commission authority at Docket No. A-311050.²⁶

Windstream KDL, a Kentucky corporation, is authorized in the Commonwealth of Pennsylvania to provide CLEC, IXC, and CAP services pursuant to Commission authority at Docket No. A-311413.²⁷

Windstream New Edge, a Delaware limited liability company, is authorized in the Commonwealth of Pennsylvania to provide CLEC, IXC, and CAP services pursuant to Commission authority at Docket Nos. A-310884, A-310884F0002, A-310884F0003, A-310884F0004, and A-2012-2326259.²⁸

Windstream Norlight, a Kentucky corporation, is authorized in the Commonwealth of Pennsylvania to provide IXC and IXC-R services pursuant to Commission authority at Docket No. A-2008-2043652.²⁹

Windstream Pennsylvania is an ILEC authorized to provide services in the Commonwealth of Pennsylvania pursuant to certificates granted at Docket No. A-312050.³⁰

Windstream Holdings is owned by investment funds managed by Elliott Investment Management L.P. and its advisory affiliates (collectively, known as the “Elliott Funds” or “Elliott”). According to the Joint Applicants, Elliott manages investment funds holding slightly less than 50% of the equity in the Company,

²³ Joint Application at 7.

²⁴ Joint Application at 7.

²⁵ Joint Application at 7.

²⁶ Joint Application at 7.

²⁷ Joint Application at 7.

²⁸ Joint Application at 7.

²⁹ Joint Application at 7.

³⁰ Joint Application at 7-8.

specifically in Nexus Aggregator L.P., Elliott Associates, L.P., and Elliott International, L.P. and their ownership in the Company will not significantly change because of the Reorganization. In addition, the Reorganization will result in the Company's existing minority equity owners through another large investment management firm by Pacific Investment Management Company LLC (herein referred to as the "PIMCO Funds" or "PIMCO") increasing their relative share of ownership in the Company. Accounts managed, advised, or sub-advised by PIMCO will not impact control of the Windstream Licensees due to the Company's governance structure, and the PIMCO Funds' ownership interest of the Company will remain below 50%.

Through the proposed Reorganization, New Windstream, with the identical pre-closing ownership and governance structure as Windstream Holdings, will become the ultimate parent of the Windstream Licensees, and additional intermediate holding companies will be added to Windstream's parent company structure and occur entirely at the parent holding company level. Furthermore, the Company will conduct a rights offering and repurchase certain membership interests in New Windstream financed with funds from the rights offering. The Joint Applicants plan to undertake this Reorganization to generate tax efficiencies and to enable certain equity holders to increase their investment while others decrease their investment. No assignment of licenses, certificates, assets, or customers by the Windstream Licensees or the immediate parent entities will occur as a consequence of the proposed Reorganization.

Windstream Holdings is a business which, through operating subsidiaries, provides fiber-based broadband to residential and small business customers in 18 states, manages cloud communications, networking, and security services for mid-to-large enterprises and government entities, and customizes wavelength and dark fiber solutions for carriers, content providers, and hyperscalers in the U.S. Windstream Holdings, the current ultimate parent of the Windstream Licensees, will conduct an internal Reorganization. The Company will form several new subsidiaries under New Windstream, including New Windstream Holdings II, LLC, which will be an indirect subsidiary of New Windstream. Windstream Holdings will then merge into New Windstream Holdings II, LLC, with New Windstream Holdings II, LLC surviving. As a result, New Windstream will become the ultimate parent of Windstream Holdings' licensed subsidiaries.

Prior to this Reorganization, Windstream Holdings will undergo non-substantial changes in the relative ownership shares maintained by its present holders that will not cause a change of majority control of the Company or the Windstream Licensees. Elliott ensures that their funds will collectively hold less than 50% of the outstanding units after the rights offering concludes by committing to exchange any common units for warrants to keep each of the Elliott Funds' ownership and the PIMCO Funds' ownership below 50% after the reduction of outstanding units. New Windstream will operate pursuant to the identical limited liability company agreement ("Agreement") as Windstream Holdings. Under the Agreement, neither Elliott nor PIMCO has or will have the ability

to appoint a majority of the board or manage day-to-day operations of the Transferee. Therefore, although the PIMCO Funds' ownership of the Transferee's equity will increase from approximately 21% to approximately 49% as a result of the Transferee repurchasing other minority investors' equity, PIMCO will not obtain any practical ability to exercise control over the Transferee.

The Reorganization is distinct from, and independent of, a proposed future transaction between Windstream and Uniti Group Inc. ("Uniti"), which the parties jointly announced on May 3, 2024 (the "Windstream-Uniti Merger"). The Joint Applicants aver that Windstream and Uniti are separately applying to the Commission for approval of that merger, which is expected to close significantly later in time than the Reorganization. The Reorganization is not dependent upon the Windstream-Uniti Merger, and Windstream aims to complete the Reorganization promptly upon regulatory approval.

The Joint Applicants attest that the Reorganization will not result in any changes to the services received by customers, including rates, terms, and conditions of service. Therefore, the Company does not intend to provide customers notice of the Reorganization.³¹

The Joint Applicants claim that the Reorganization will serve the public interest. At the same time, the Reorganization will have no adverse impact on the Company's customers and will appear entirely transparent to customers. Immediately following the Reorganization, the Company will continue to provide service to its customers at the same rates, terms, and conditions and without interruption.³²

The Joint Applicants indicate that no service territories will be affected by the Reorganization, as the Company will continue to provide the same services in the same locations in Pennsylvania before and after the Reorganization.³³

The Joint Applicants confirm that the Company is in compliance with all Commission obligations and filings. None of the Joint Applicants have been a party to any state or federal proceedings over the last three years involving allegations of violations of State or Federal Requirements.³⁴

The Joint Applicants verify that there will be no negative effect on their capital structures as a result of the Reorganization, nor will it have an immediate effect on its affiliated interest agreements, if any.³⁵

³¹ Joint Application at 16.

³² Joint Application at 13-14.

³³ Joint Application at 15.

³⁴ Joint Application at 16.

³⁵ Joint Application at 16-18.

The Joint Applicants have filed notice with the U.S. DOJ regarding the rights offering that will precede the Reorganization, and the antitrust review period for this notification expired on July 10, 2024. The Reorganization does not require its FCC application to be filed with respect to Windstream’s domestic and international Section 214 authorizations or its common carrier wireless licenses. However, the change in the ultimate parent company of the Windstream Licensees holding private wireless licenses requires FCC approval.³⁶ State regulatory action on the proposed Reorganization will therefore not adversely impact national security, as the pertinent federal agencies have already reviewed Windstream’s foreign interest holders.³⁷ Furthermore, applications for approval of the general rule transaction have been filed with state utilities commissions for telecommunications authorizations held in California, Connecticut, Kentucky, Louisiana, Mississippi, New Jersey, New York, South Carolina, Texas, and Virginia.³⁸

The Joint Applicants further submit that the Reorganization complies with the prohibition against cross-subsidization imposed under federal and state law.³⁹ However, the Company is subject to broadband deployment commitments in Pennsylvania by following the FCC’s Rural Digital Opportunity Fund (RDOF), the American Rescue Plan Act, and its Network Modernization Plan (NMP).⁴⁰

The Joint Applicants claim that the Reorganization is not expected to result in loss or potential loss of Pennsylvania jobs, tax revenues, facilities, downsizing, consolidation, or any other net negative effect in Pennsylvania.⁴¹

The Joint Applicants do not expect that the Reorganization will negatively impact any functions, operations, employment, or activities of any nature currently performed in or affecting Pennsylvania.⁴²

The Commission has determined that the Company is current with the filing of its annual financial and annual Security Planning and Readiness Self-Certification reports. There are no payments owed to the Pennsylvania USF, and there are no outstanding Commission fines, fees, or fiscal assessments due.

As required by 66 Pa. C.S. §§ 1102(a) and 1103 and the Commission’s regulations at 52 Pa. Code § 63.324(k)(1), we find that the record sufficiently supports the Joint

³⁶ Response to Data Request at question 15.

³⁷ Response to Data Request at question 17.

³⁸ Response to Data Request at question 4. According to the Joint Applicants, an application was expected to be filed on July 11 with the Texas Public Utility Commission while the others remain pending.

³⁹ Joint Application at 18.

⁴⁰ Specifically, Windstream Buffalo, Windstream Conestoga, Windstream D&E, and Windstream Pennsylvania are subject to their NMP commitments. Windstream Pennsylvania is also subject to RDOF and the American Rescue Plan Act commitments.

⁴¹ Response to Data Request at question 8.

⁴² Response to Data Request at question 10.

Applicants' claim that the proposed Reorganization is in the public interest.⁴³ Specifically, the Reorganization will have no adverse effects on the quality of service enjoyed by the Windstream Licensees' customers, nor will it impact the accommodation, convenience, or safety of the public. As stated by the Joint Applicants, the Reorganization will not disrupt any customer-facing operations such as ordering, service installation, customer service, and billing, which will continue to be provided as before. As described in the joint application, New Windstream will continue to be technically, managerially, and financially well-qualified to be the ultimate owner of the Windstream Licensees. Once the Reorganization is completed, the Windstream Licensees will continue to have the managerial, technical, financial, and customer care qualifications to provide high quality telecommunications services to consumers in Pennsylvania. The Reorganization will thus be seamless for the Windstream Licensees' customers and accords with the public interest. Therefore, for the reasons provided by the Joint Applicants, we conclude that the record provides substantial evidence of positive public benefits necessary to justify approval of the proposed Reorganization.

Additionally, based upon the Commission's analysis of the information provided in the joint application, we find that the Reorganization will benefit and does not harm competition. Furthermore, there are a number of unaffiliated providers offering similar services in the same geographic locales, including but not limited to Brightspeed, Charter, Comcast, Fairpoint, Frontier, Starlink, T-Mobile, US Cellular, and Verizon.⁴⁴ The Commission's approval will enhance the Company's ability to compete in Pennsylvania without harm to consumers or Pennsylvania markets as required by the Public Utility Code at 66 Pa. C.S. §§ 1102(a) and 1103 and the Commission's regulations at 52 Pa. Code § 63.324(k)(3).

For these reasons, we agree with the assertions advanced by the Joint Applicants and conclude that the Reorganization is in the public interest, as it is necessary or proper for the service accommodation, convenience, or safety of the public. We also conclude that the Company is fit financially, managerially, and technically. Thus, the Commission will issue a certificate of public convenience authorizing this Reorganization as required by the Public Utility Code at 66 Pa. C.S. §§ 1102(a) and 1103 and the Commission's regulations at 52 Pa. Code § 63.324(k)(2).

In summary, we find that the joint application should be approved as a general rule transaction under Section 63.324 of the Commission regulations and that a certificate of

⁴³ We believe the record shows that the transaction satisfies the necessary or proper standard under Section 1103 of the Code and provides affirmative public benefits consistent with *City of York v. Pa. PUC*, 295 A.2d 825 (Pa. 1972) (*City of York*), and *Irwin A. Popowsky v. Pa. PUC*, 937 A.2d 1040 (Pa. 2007) (*Popowsky*). The Commission retains general authority to impose conditions upon approval of a transaction as codified in the Public Utility Code at 66 Pa. C.S. § 1103. "[E]ven where the [Commission] finds benefit in the first instance, Section 1103(a) also confers discretion upon the agency to impose conditions which it deems to be just and reasonable." *Popowsky*, 937 A.2d at 1057, n.21. This includes authority to impose conditions upon approval of a general rule or pro forma transaction in accordance with Sections 63.324(h)(4) and 63.325(h)(4) of our regulations at Title 52 of the Pennsylvania Code.

⁴⁴ Response to Data Request, question 14.

public convenience be issued to Windstream Holdings II, LLC evidencing our approval of the general rule transfer of control of Windstream Holdings II, LLC to New Windstream, LLC.

However, there is risk to Pennsylvania in approving this general rule transaction in advance of the remaining jurisdictions, which may impose conditions that could jeopardize the Joint Applicants' averments to Pennsylvania upon which this approval is based. For this reason, in the event the Joint Applicants and/or their non-Pennsylvania subsidiaries and affiliates agree to or accept resolution of this or a related pending transaction from another jurisdiction in which that jurisdiction obtains or imposes any condition(s) on or commitment regarding this and/or a related pending transaction, the Joint Applicants shall, within 10 days of such agreement or acceptance, provide notice of the condition(s), including a copy of the relevant jurisdictional action, to Pennsylvania by letter to the Secretary with a copy to the Commission's Director, Bureau of Technical Utility Services (TUS). In the notice, the Joint Applicants shall offer to Pennsylvania their agreement to or acceptance of the same condition(s), or reasonably comparable condition(s) for Pennsylvania, as appropriate. The Commission will act upon the notice as expeditiously as possible. If the Joint Applicants do not agree with this provision, they shall immediately notify the Commission in writing by letter to the Secretary with a copy to TUS. Upon such notice, the Joint Applicants are advised pursuant to Sections 703(g) and 1103 of the Code, 66 Pa. C.S. §§ 703(g), 1103, that this Secretarial Letter approving the Reorganization shall be immediately rescinded and of no effect; and, in accordance with the Code and our regulation at 52 Pa. Code § 63.324(k)(5), Commission review of the Reorganization shall be extended for a further opportunity for the Joint Applicants to be heard and for further consideration by the Commission as necessary and appropriate to protect the public interest.

Therefore, the Commission directs the Joint Applicants to file notice with the Commission within 30 days of the consummation of the general rule transaction detailing the final corporate structure resulting from the Reorganization.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

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