

# Morgan Lewis

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August 18, 2025

## **Via Electronic Filing**

Matthew Homsher, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

**Re: Docket No. A-2025-3053757  
Application of Everstream Solutions LLC for the Approval of the  
Discontinuance of Competitive Access Services**

## **Motion for Summary Judgment**

Dear Secretary Homsher:

On behalf of Everstream Solutions LLC ("Everstream"), enclosed for filing with the Pennsylvania Public Utility Commission (the "Commission"), is Everstream's Motion for Summary Judgment ("Motion"). The public version of the Motion is being filed via electronic filing. The **CONFIDENTIAL** version is being sent via the Office of the Secretary's SharePoint portal.

The **CONFIDENTIAL** version, which contains **CONFIDENTIAL Exhibit ES-1, Exhibit ES-2, and Exhibit E-3**, contains confidential contracts between Everstream and Zito Media Communications, LLC and T-Mobile USA, Inc. Everstream respectfully request that access to the Confidential Information be limited to the Commissioners and Commission Staff who are involved in the consideration of the proceeding and that the non-public, confidential version of the Motion not be posted to any public website or maintained in any public file or public filing room.

Please date-stamp the extra copy of this Motion and return it in the envelope provided. If you have any questions concerning this Motion, please contact me or my colleague, Danielle Burt ([danielle.burt@morganlewis.com](mailto:danielle.burt@morganlewis.com)).

Respectfully submitted,

*/s/ Catherine G. Vasudevan*

Catherine G. Vasudevan

*Counsel for Everstream Solutions LLC*

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITIES COMMISSION**

Application of )  
Everstream Solutions LLC for the Approval ) Docket No. A-2025-3053757  
Of the Discontinuance of Competitive Access Services )  
)

**NOTICE TO PLEAD**

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To Parties in Docket No. A-2025-3053757:

You are hereby notified to file a written response to the attached Motion for Summary Judgment of Everstream Solutions LLC within twenty (20) days from the day of service of this notice. If you do not file a written response to the enclosed Motion within twenty (20) days of service, the facts set forth by Everstream Solutions LLC may be deemed to be true, thereby requiring no other proof, and judgment may be entered against you. All pleading, such as Answers to Motions, must be filed with the Secretary of the Pennsylvania Public Utilities Commission:

Matthew Homsher, Secretary  
Pennsylvania Public Utilities Commission  
Commonwealth Keystone Building  
400 North Street, Second Floor  
Harrisburg, PA 17120

You must serve a copy of your response on the undersigned counsel for Everstream Solutions LLC. Failure to respond to this Motion could result in dismissal of the case.

Respectfully submitted,

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Dated: August 18, 2025

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITIES COMMISSION**

Application of )  
Everstream Solutions LLC for the Approval ) Docket No. A-2025-3053757  
Of the Discontinuance of Competitive Access Services )  
)

**EVERSTREAM SOLUTIONS LLC**  
**MOTION FOR SUMMARY JUDGMENT**

Everstream Solutions LLC (“Everstream”) files this Motion for Summary Judgment pursuant to 52 Pa. Code § 5.102(c). As set forth below, there is no dispute of material fact and the Commission should grant Everstream’s discontinuance application as a matter of law. In support, Everstream states:

**I. BACKGROUND**

1. Everstream is authorized to offer intrastate telecommunications services as a Competitive Access Provider, pursuant to a certificate issued by the Commission in Docket No. A-2020-3022566. It offers such services to enterprise and carrier customers pursuant to PA PUC Telephone Tariff No. 1 (the “Tariff”), filed with the Commission under the same docket number.

2. On March 5, 2025, Everstream filed an Application for Approval of the Discontinuance of Competitive Access Services in the Commonwealth. Everstream requested authority to discontinue services as soon as June 30, 2025.

3. Everstream filed a similar application with the Federal Communications Commission (“FCC”) on February 13, 2025. It was automatically approved on April 5, 2025. *See* Public Notice, DA 25-194 (rel. Mar. 5, 2025).

4. On March 21, 2025, Zito Media Communications, LLC (“Zito”) filed a Protest in this docket regarding Everstream's proposed discontinuance. Zito claimed it could not find substitute service by June 30, 2025. Everstream responded to Zito’s Protest and proposed to extend the

discontinuance date until December 31, 2025, to allow Zito additional time to migrate its respective services.

5. T-Mobile USA, Inc. (“T-Mobile”) filed its Protest regarding Everstream’s discontinuance of service, out of time, on April 10, 2025. In its protest, T-Mobile requested a minimum two-year “wind-down” period, as contemplated under a private contract between Everstream and T-Mobile.

6. In response to Zito and T-Mobile’s Protests, Everstream voluntarily extended the discontinuance date until December 31, 2025. Everstream filed a response letter to T-Mobile reiterating the extension date and filed a notice of the extension with the FCC.

7. The services that Zito and T-Mobile obtain from Everstream are governed by private contractual agreements and not the intrastate Tariff on file with the Commission.

8. Specifically, Everstream provides dark fiber capacity to Zito pursuant to a Master Services Agreement between Zito Media Communications II, LLC and Everstream (effective June 8, 2015). See **Confidential Exhibit ES-1 (Master Services Agreement Between Zito Media Communications II, LLC and Everstream Solutions LLC)**. Everstream does not provide any telecommunications services to Zito.

9. Everstream provides services to T-Mobile pursuant to the Master Agreement between T-Mobile USA, Inc. and Everstream Solutions LLC (effective Sept. 29, 2017), which contractually requires Everstream to provide T-Mobile with ethernet backhaul services to T-Mobile sites and segments, as well as installation and maintenance of required equipment and technical support (“2017 T-Mobile Contract”), and the 2022 Restated Market Service Order between T-Mobile USA, Inc. and Everstream Solutions LLC (effective Apr. 1, 2022), which amends the 2017 T-Mobile Contract, and requires Everstream to provide T-Mobile contracted backhaul services to

additional sites (“2022 T-Mobile Contract”). *See Confidential Exhibit ES-2 (Master Agreement between T-Mobile USA, Inc. and Everstream Solutions LLC (effective Sept. 29, 2017)) and Confidential Exhibit ES-3 (2022 Restated Market Service Order between T-Mobile USA, Inc. and Everstream Solutions LLC (effective Apr. 1, 2022))*. Both are private contracts.

10. T-Mobile confidentially filed the contracts in the record on July 22, 2025, with its Petition requesting that the Commission issue an order that enjoins Everstream from abandoning any customers or service in the Commonwealth and mandates Everstream continue providing service in the Commonwealth consistent with its Certificate of Public Convenience and Necessity. The Petition was withdrawn.

11. Neither Zito nor T-Mobile purchases any service offered under Everstream’s intra-state Tariffs. *See Declaration of John J. Lyons at paras. 4 and 5.*

12. In fact, Everstream does not provide service under the Tariff to *any* customer in Pennsylvania. *See Declaration of John J. Lyons at para. 6.*

13. In addition, on March 28, 2025, Everstream and certain of its affiliates filed for Chapter 11 reorganization in the U.S. Bankruptcy Court for the Southern District of Texas (“Bankruptcy Court”). On August 1, 2025, the Bankruptcy Court approved the sale of a significant portion of Everstream’s assets to Bluebird MidWest, LLC (“Bluebird”).

14. The sale of assets to Bluebird excludes the Pennsylvania facilities used to provide services to Zito and T-Mobile. After the sale of assets to Bluebird, those Pennsylvania facilities will remain part of the estate that is subject to the jurisdiction of the Bankruptcy Court. *See Declaration of John J. Lyons at para. 2.*

15. The pleadings in this matter are closed.

## II. MOTION FOR SUMMARY JUDGMENT

16. The Commission's regulations permit any party to move for summary judgment or judgment on the pleadings after the pleadings are closed.<sup>1</sup> The presiding officer will grant the motion if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1).

17. The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. *First Mortgage Co. of Pennsylvania v. McCall*, 459 A.2d 406 (Pa. Super. 1983).

18. The provision at 52 Pa. Code §5.102(c) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of the case exists, a hearing is unnecessary. *Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission*, 563 A.2d. 557 (Pa. Cmwlth. 1989).

19. The pleadings reveal that Everstream is entitled to judgment as a matter of law and grant of the discontinuance application because the Protests involve issues of private contract and not Everstream's intrastate tariffed services. The law in the Commonwealth is well established that the Commission does not have jurisdiction over private contractual disputes. *Adams v. PA P.U.C.*, 819 A.2d 631 (Pa. Cmwlth. 2003); *Litman v. Peoples Natural Gas Company*, 303 Pa. Superior Ct. 345, 449 A.2d 720 (1982). The Commission has also found that it does not have jurisdiction to

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<sup>1</sup> 52 Pa. Code 5.102(a).

adjudicate purely private rights. See Petition of TMC Management Corporation and CMC Development Corporation for the Issuance of an Emergency Order Blocking a Threatened Service Termination and other Relief, Order, Docket No. P-2021-3024431 (April 15, 2021) (“TMC-CMC Order”) (citing Snyder v. Pennsylvania Public Utility Commission, 144 A.2d 468 (Pa. Super. 1958)).

20. The dark fiber capacity that Everstream provides Zito is not a telecommunications service, and in any event is governed by the private Zito Contracts. Everstream does not provide any services to Zito pursuant to its intrastate Tariff on file with the Commission.

21. Similarly, the ethernet backhaul services, as well as other services that Everstream provides T-Mobile, are governed by the 2017 and 2022 T-Mobile Contracts. Everstream does not provide services to T-Mobile pursuant to its intrastate Tariff on file with the Commission. The rights asserted by T-Mobile for a two-year “wind-down” period derive from private contracts, and the Commission does not have jurisdiction over private contractual disputes. See TMC-CMC Order (citing Adams et. al. v. PUC, 819 A.2d. 631 (Pa. Cmwlt. 2003)).

22. No other customer purchases any services offered by Everstream under its Tariff. All services are governed by private contracts.

23. Neither Zito nor T-Mobile, nor any other person in the Commonwealth, will be harmed by the withdrawal of Everstream’s intrastate Tariff, since no customers are purchasing the services offered thereunder. Accordingly, there is no factual basis on which the Commission could find that Everstream’s discontinuance of service would be contrary to the public interest. Everstream reaffirms that, notwithstanding the relief sought in this proceeding, it still intends to honor its commitment to continue providing service until December 31, 2025.

24. To the extent that either Zito or T-Mobile is entitled to assert any claims against Everstream under their respective private contracts, the Bankruptcy Court is the appropriate forum.

25. The Commission has previously concluded that it is without jurisdiction to issue an order affecting the disposition of a debtor's assets when all the debtor's estate is subject to the exclusive control of the bankruptcy court, whether those assets were acquired before or after the debtor filed for protection. *Shirley Elliott v. PECO Energy Company*, 2017 WL 3053601 (Pa.P.U.C.). As such, the Commission does not have jurisdiction to adjudicate any issues regarding Everstream's disposition of its Pennsylvania assets and should grant the discontinuance application.

26. The Commission's regulations do not prohibit the termination of unregulated services. As neither Zito nor T-Mobile obtain any tariffed services from Everstream in the Commonwealth, there is no issue of fact for the Commission to resolve, and it should grant the discontinuance application.

### III. REQUESTED RELIEF

WHEREFORE, for all the reasons stated herein, Everstream respectfully requests that your Honorable Commission grant the within Motion and the discontinuance application.

Respectfully submitted,

/s/ Catherine G. Vasudevan

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## **DECLARATION OF JOHN J. LYONS**

I, John J. Lyons, declare as follows:

1. I am Vice President, Business Operations for Everstream Solutions LLC (“Everstream”). I have personal knowledge of all facts stated in this Declaration.

2. On March 28, 2025, Everstream and certain of its affiliates filed for Chapter 11 reorganization in the U.S. Bankruptcy Court for the Southern District of Texas (“Bankruptcy Court”). On August 1, 2025, the Bankruptcy Court approved the sale of a significant portion of Everstream’s assets to Bluebird MidWest, LLC (“Bluebird”). The sale of such assets to Bluebird excludes the Everstream operations in Pennsylvania used to provide services to Zito and T-Mobile. Nevertheless, those Pennsylvania assets remain part of the estate that is subject to the jurisdiction of the Bankruptcy Court.

3. I have reviewed the billing and contract records of Everstream with respect to all customers it serves in the Commonwealth of Pennsylvania.

4. Zito Media Communications, LLC (“Zito”) purchases dark fiber capacity from Everstream in Pennsylvania pursuant to a contractual arrangement. Zito does not purchase any telecommunications service that Everstream offers under its Pennsylvania intrastate tariff.

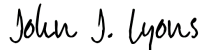
5. T-Mobile USA, Inc. (“T-Mobile”) purchases ethernet backhaul transmission and certain other services from Everstream pursuant to two contracts between the companies. T-Mobile has provided Everstream with Federal universal service contribution exemption certifications with respect to these services, which indicate that the services are jurisdictionally interstate in nature. None of these services are offered in Everstream’s Pennsylvania intrastate tariff, and T-Mobile does not purchase any service offered in that tariff.

6. In fact, Everstream does not provide service under its intrastate tariff to *any* customer in Pennsylvania. Based upon my review of Everstream's account records, I have found that every telecommunications service provided by Everstream to Pennsylvania customers is provided under the terms of a contract.

The facts set forth above are true and correct and I expect to be able to prove the same at any hearing hereof. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904.

Signed on the 15<sup>th</sup> day of August, 2025.

Signed by:



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Everstream Solutions LLC  
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**Confidential**  
**Exhibit ES-1**

**Confidential**  
**Exhibit ES-2**

**Confidential**  
**Exhibit ES-3**

**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the foregoing Public Version of the Motion for Summary Judgment via electronic mail only upon the parties, listed below, on August 18, 2025:

The Honorable Steven K. Haas  
The Honorable Chad A. Allensworth  
Administrative Law Judges  
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*/s/ Danielle Burt* \_\_\_\_\_  
Danielle Burt