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June 2, 2020

VIA EMAIL

Brinda Westbrook, Commission Secretary
District of Columbia Public Service Commission
325 G Street, NW, Suite 800
Washington, D.C. 20005

Re: Joint Application of Windstream Holdings, Inc., Windstream Services, LLC, and Affiliated Subsidiaries for Approval of a Transfer of Indirect Control of Certificated Local Exchange Carriers

Dear Ms. Westbrook:

Enclosed for filing with the Commission is the Joint Application of Windstream Holdings, Inc., Windstream Services, LLC, A.R.C. Networks, Inc., ATX Licensing, Inc., Broadview Networks, Inc., Business Telecom, LLC, Cavalier Telephone Mid-Atlantic, LLC, Choice One Communications Resale, L.L.C., Conversent Communications Resale, L.L.C., CTC Communications Corp., Intellifiber Networks, LLC, Masscomm, LLC, McLeodUSA Telecommunications Services, LLC, PAETEC Communications, LLC, US LEC of Virginia, LLC, and Windstream KDL, LLC, for Approval of a Transfer of Indirect Control of Certain Certificated Local Exchange Carriers.

Please acknowledge receipt and acceptance of this filing. Should you have any questions concerning this filing, please do not hesitate to contact the undersigned.

Respectfully Submitted,

Christopher W. Savage
Attorney for
Windstream Holdings, Inc.
Windstream Services, LLC
and their affiliates

BEFORE THE
DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION

Application of **Windstream Holdings, Inc.** **Windstream Services, LLC** **A.R.C. Networks, Inc.** **ATX Licensing, Inc.** **Broadview Networks, Inc.** **Business Telecom, LLC** **Cavalier Telephone Mid-Atlantic, LLC** **Choice One Communications Resale, L.L.C.** **Conversent Communications Resale, L.L.C.** **CTC Communications Corp.** **Intellifiber Networks, LLC** **Masscomm, LLC** **McLeodUSA Telecommunications Services, LLC** **PAETEC Communications, LLC** **US LEC of Virginia, LLC; and** **Windstream KDL, LLC** for Approval for a Transfer of Indirect Control of Certain Certificated Local Exchange Carriers	Docket No. ____

APPLICATION

Windstream Holdings, Inc. ("Windstream Holdings") Windstream Services, LLC ("Windstream Services"), and Windstream Services' fourteen certificated local exchange carrier subsidiaries operating in the District of Columbia, A.R.C. Networks, Inc., ATX Licensing, Inc., Broadview Networks, Inc., Business Telecom, LLC, Cavalier Telephone Mid-Atlantic, LLC, Choice One Communications Resale, L.L.C., Conversent Communications Resale, L.L.C., CTC Communications Corp., Intellifiber Networks, LLC, Masscomm, LLC, McLeodUSA Telecommunications Services, LLC, PAETEC Communications, LLC, US LEC of Virginia, LLC, and Windstream KDL, LLC (the "Windstream Licensees") (collectively, "Windstream" or "Applicants"), respectfully request approval by the District of Columbia Public Service

Commission ("Commission"), to the extent required under D.C. Code § 34-1001 and 15 D.C.M.R. § 2511.2, for a planned corporate reorganization that will enable Windstream and other debtor affiliates to emerge from a bankruptcy proceeding commenced in February 2019 (the "Reorganization") and better serve customers in the District of Columbia and across the United States.[1] The Reorganization, which may include *pro forma* parent holding company corporate changes and/or internal asset transfers, will result in the creation of a new reorganized Windstream parent structure ("New Windstream") but no appreciable change in operations or customer service in the District of Columbia.

I. Introduction

On February 26, 2019, Windstream notified the Commission of the commencement of voluntary cases in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") under Chapter 11 of Title 11 of the United States Code. Windstream subsequently secured debtor-in-possession financing and negotiated extensively with various creditor constituencies. These negotiations and related Bankruptcy Court proceedings have led to a Plan of Reorganization that will enable Windstream to achieve a deleveraged capital structure and sufficient liquidity to fund its post-emergence business plan.[2] Following consummation of the

[1] It is Applicants' understanding that the Commission exercises approval authority over transfers of control involving communications providers only insofar as they own or operate communications facilities located within the District of Columbia. *See* Formal Case No. 990, Order No. 13139 (Mar. 25, 2004). Of the Windstream Licensees, the following are facilities-based carriers in the District of Columbia: Broadview Networks, Inc.; Intellifiber Networks, LLC; McLeodUSA Telecommunications Services, LLC; PAETEC Communications, LLC; Windstream KDL, LLC; and US LEC of Virginia, LLC. Applicants seek approval for the Reorganization only insofar as required, and understand that approval may not be required for remaining Windstream Licensees.

[2] *See* First Amended Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. et al., Pursuant to Chapter 11 of the Bankruptcy Code, Dkt. 1781, Case No. 19-22312 (Bankr. S.D.N.Y. entered May 6, 2020); Disclosure Statement Relating to the First Amended Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. et al., Pursuant to Chapter 11 of the Bankruptcy Code, Dkt. 1782, Case No. 19-22312 (Bank. S.D.N.Y. entered May 6, 2020).

Reorganization, New Windstream—one of the largest telecommunications and information service providers in the United States with 11,600 employees—will move forward with a stable capital structure, uninterrupted service, and an increased capability to compete to bring advanced services to consumers across the country.

The Reorganization will only involve upstream parent entities; consequently, there will be no change in the services, certificates, assets, or corporate form of the Windstream Licensees. As a result, the reorganization will be seamless from the perspective of District of Columbia customers.

The Reorganization is demonstrably in the public interest and consistent with the five public interest factors the Commission considers under 15 D.C.M.R. § 2511.2(d). The Reorganization will have no effect on universal service, public safety and welfare, the quality of local telecommunications services, or consumer rights. Finally, any impact on competition will be positive, as the Reorganization will allow Windstream to exit bankruptcy with substantially less debt and in an improved financial position, with a renewed ability to offer new and advanced services to consumers and compete with incumbents. Windstream's customers in the District of Columbia will continue to enjoy to uninterrupted access to high-quality communications services at the same rates, and under the same terms and conditions of service, as exist today, with any future changes arising in the normal course of business operations. Accordingly, the Applicants urge the Commission to grant the Application without delay.

II. <u>The Applicants</u>

Windstream Holdings, Inc. Windstream Holdings, the parent company of Windstream Services and the Windstream Licensees, is a Delaware corporation headquartered at 4001 North Rodney Parham Road, Little Rock, Arkansas 72212, with stock traded in the "Over the Counter" market under the symbol “WINMQ.” Windstream, through its operating subsidiaries, is a leading provider of advanced network communications and technology solutions for consumers, businesses, enterprise organizations and wholesale customers across the United States.

Windstream Services, LLC. Windstream Services is a limited liability company registered in Delaware, with its principal place of operation at 4001 Rodney Parham Road, Little Rock, AR 72217. It is the immediate subsidiary of Windstream Holdings.

Windstream Services’ subsidiaries, including the Windstream Licensees, provide voice and data services that enhance the communication capabilities of consumers and businesses across the United States. In addition, Windstream’s operating subsidiaries supply core transport solutions on a local and long-haul fiber network currently spanning approximately 150,000 route miles. Windstream’s consumer and small business segment includes approximately 1.4 million residential and small business customers that receive voice, broadband, entertainment, and security solutions. Windstream’s enterprise business segment offers services such as software-defined wide area networking (“SD-WAN”) and unified communications as a service (“UCaaS”) to businesses across the United States, offers solutions to enable businesses to compete more effectively in the digital economy, and offers a variety of other data services, such as cloud computing, as well. Windstream’s wholesale customer segment leverages its nationwide network to provide 100 Gbps bandwidth and transport services to wholesale customers, including telecommunications companies, content providers, and cable and other network operators.

The Windstream Licensees. Windstream Services controls fourteen certificated local exchange carriers that provide service in the District of Columbia. Each of Windstream’s certified local exchange carriers operating in the District of Columbia is listed below, along with the numbers and dates of the Commission orders authorizing them to provide service in the District of Columbia:

Windstream Licensee	**Commission Order**
A.R.C. Networks, Inc.	No. 11857 (Dec. 5, 2000)
ATX Licensing, Inc.	No. 11290 (Nov. 17, 1998)
Broadview Networks, Inc.	No. 11791 (Sept. 5, 2000)
Business Telecom, LLC	No. 11177 (May 7, 1998)
Cavalier Telephone Mid-Atlantic, LLC	No. 12277 (Dec. 27, 2001)
Choice One Communications Resale, L.L.C.	No. 15281 (June 1, 2009)
Conversent Communications Resale, L.L.C.	No. 15280 (June 1, 2009)
CTC Communications Corp.	No. 11383 (May 17, 1999)
Intellifiber Networks, LLC	No. 15843 (June 11, 2010)
Masscomm, LLC	No. 15888 (July 20, 2010)
McLeodUSA Telecommunications Services, LLC	No. 12050 (July 2, 2001)
PAETEC Communications, LLC	No. 11339 (Mar. 17, 1999)
US LEC of Virginia, LLC	No. 11362 (Apr. 20, 1999)
Windstream KDL, LLC	No. 14757 (Mar. 10, 2008)

III. Contact Information

The contact information for the Applicants is as follows[3]:

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Please provide copies of any communications relating to the Application to the following:

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[3] *Id*. § 2511.2(a).

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IV. Description of the Reorganization

As is common in bankruptcy situations, the interests held by the stockholders of Applicants' ultimate parent company, Windstream Holdings, will be canceled and the company will be reorganized. The creditors who today hold the first lien debt of Windstream Services will, when the reorganization is complete, hold 100% of the equity[4] in the Windstream Licensees' ultimate parent entity, New Windstream.[5]

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[4] The details of the terms on which the new equity interests will be issued are set out in the First Amended Plan of Reorganization, filed with the bankruptcy court on May 6, 2020. A copy of that document is available at http://www.kccllc.net/windstream/document/list/4837. Applicants will provide the Commission with notice of any updates or amendments to the Plan of Reorganization, as well as any relevant orders of the Bankruptcy Court.

[5] The reorganization may involve *pro forma* changes to the holding company structure and/or

A substantial majority of New Windstream's equity will be held by subsidiaries, affiliates, or affiliated entities of six investment companies (collectively with their subsidiaries and affiliated entities, the "First Lien Investors"): (1) Elliott Management Corporation, headquartered at 40 W. 57th Street, New York, New York 10019; (2) Pacific Investment Management Company LLC, headquartered at 650 Newport Center Drive, Newport Beach, California 92660; (3) Oaktree Capital Group, headquartered at 333 S. Grand Avenue, 28th Floor, Los Angeles, California 90071; (4) HBK Capital Management, headquartered at 2300 North Field Street, Suite 2200, Dallas, Texas 75201; (5) Franklin Resources Inc. operating as Franklin Templeton, headquartered at One Franklin Parkway, Building 970, 1st Floor, San Mateo, California 94403; and (6) Brigade Capital Management, L.P., headquartered at 399 Park Avenue, Suite 1600, New York, NY 10022.[6]

The Reorganization, which is also subject to review and approval by the Federal Communications Commission ("FCC"), is expected to occur in two steps, as described below.

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internal asset transfers through which New Windstream will become the ultimate parent of Windstream Holdings' subsidiaries including the Windstream Licensees. The precise form of these arrangements is still under consideration, but any such changes will be at the holding company level and will not affect the form or organization of the Windstream Licensees. Applicants will provide the Commission with updated organizational charts depicting any such changes once finalized.

[6] As part of the process of emergence from bankruptcy, certain Windstream Holdings creditors (other than the first lien debtholders noted above) will have the right to obtain equity in post-emergence New Windstream. In addition, a small amount of equity will be allocated to other functions, such as a management incentive plan. As a result, the exact ownership percentages of the new owners of post-emergence New Windstream will not be finalized until the company emerges from bankruptcy and the first step of the two-step process described in this section is completed. It is anticipated that Elliott entities will temporarily hold 49.9% of the voting equity in New Windstream upon initial emergence from bankruptcy, and that Elliott entities will ultimately hold an estimated aggregate of 40.3% of the voting equity in New Windstream. The remaining First Lien Investors controlled by the five other investment companies are expected to hold approximately 40.9% of the voting equity in New Windstream post-consummation, and as subject to the Backstop Commitment Agreement described in the Plan. Windstream Licensees will provide the Commission with an informational notice of consummation at the completion of each step of the process, along with ownership details available at that time.

Applicants are using a two-step process because some of the First Lien Investors' subsidiaries, affiliates, or affiliated entities that will be acquiring equity interests in New Windstream are registered in other countries and/or have foreign investors. Federal law requires additional review of foreign ownership above defined thresholds in entities that hold certain FCC-issued licenses and federal authorizations held by Windstream affiliates.[7]

Even where, as here, there is no reason to believe that the FCC will disapprove foreign investors' acquisition of equity interests in wireless licensees, approvals of such transactions can take much longer to complete than approvals that do not. At the same time, it is generally important—both economically and operationally—for an entity to emerge from bankruptcy as soon as practicable. As a result, where this type of federal review is required for companies emerging from bankruptcy, the FCC has permitted them to structure their transition to new ownership in two steps.

First, a company emerges from bankruptcy with its equity acquired by investors whose individual and combined foreign ownership are below the thresholds for FCC review of foreign investments. At this step, the post-emergence owners with direct or indirect foreign ownership receive, in lieu of equity (in whole or in part), warrants to purchase equity in the future. Then—after the company has emerged from bankruptcy—the entities assigned warrants in the first stage seek FCC approval to exercise those warrants, at which point the FCC reviews the foreign ownership, with the warrants exercised only after FCC approval. This process permits the company to emerge from bankruptcy sooner by deferring the FCC's sometimes lengthy review of

[7] Windstream Holdings affiliates hold FCC common carrier wireless spectrum licenses and Section 214 authorizations. S*ee generally* 47 U.S.C. § 310; *In re Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership,* Notice of Proposed Rulemaking, 31 FCC Rcd 7456, 7458 ¶ 6 (2016).

foreign ownership issues until after emergence, and allowing FCC review of the first step to be limited to a transfer of ownership to domestic (or mostly domestic) owners.

Under this two-step process, the Windstream companies will emerge from bankruptcy with the First Lien Investors holding a mix of equity interests that do not require FCC review or approval of foreign ownership and warrants in New Windstream.[8] Then, New Windstream will request FCC approval for the warrant holders to exercise the warrants. 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.

Here, Applicants respectfully request that the Commission promptly issue an order pursuant to D.C. Code § 34-1001 and 15 D.C.M.R. § 2511.2 approving the complete two-step Reorganization. That is, Applicants request approval of both (1) the initial reorganization of Windstream Holdings and issuance of equity and warrants by which the First Lien Investors will come to own equity in New Windstream to, as described above; and (2) the ultimate exercise of those warrants. This will permit Windstream Holdings to emerge from bankruptcy more quickly, while at the same time accommodating all appropriate regulatory reviews.

Organization charts showing the Applicants' corporate structures pre-transaction and post-transaction are attached hereto as Exhibits A and B, respectively. Applicants expect to complete the Reorganization by August 28, 2020, pending receipt of regulatory approval in numerous jurisdictions.

[8] The details regarding the terms on which the warrants will be issued are laid out in the documents filed in the Bankruptcy Court noted above.

V. Public Interest Considerations

The Reorganization and the path forward it charts for the emergence of Windstream from bankruptcy is demonstrably in the public interest and consistent with the five public interest factors the Commission considers under 15 D.C.M.R. § 2511.2(d): public safety and welfare, quality of local telecommunications services, competition, consumer rights, and universal service. The Reorganization will generate substantial benefits and result in no countervailing harms.

Primarily, the Reorganization will allow New Windstream, Windstream, and its subsidiaries to emerge from bankruptcy with substantially less debt while providing compensation to their creditors. This will allow Windstream's customers to continue to enjoy uninterrupted access to the same safe, reliable, and high-quality telecommunications and information services from the same service providers at the same competitive rates and under the same terms and conditions as before. Any future changes will result from the normal course of business operations, as was the case prior to the Reorganization. In addition, the Reorganization will have no effect on the operations or the managerial or technical qualifications of Windstream or the Windstream Licensees. The Reorganization will therefore have no adverse effect on the quality of local telecommunications service or on the public safety and welfare of District of Columbia residents.

In addition, the Reorganization will not adversely affect competition or customer choice in the District of Columbia—or elsewhere—because it will not result in a reduction of available service providers. The Reorganization will not create any new combinations and is thus incapable of generating anticompetitive horizontal or vertical concentration. District of Columbia customers will continue to have access to the same number of competitive alternatives they have today. Moreover the proposed transaction will not otherwise enable Windstream to engage in anticompetitive behavior. Indeed, approval of the Reorganization will allow for a much more stable and solvent Windstream with a stronger capital structure and better access to capital to compete for customers. Freed from the operational constraints of bankruptcy, Windstream will be better able to drive investment in advanced services, enhanced customer service, and competitive offerings for customers in the District of Columbia and all over the United States. Among other things, bankruptcy emergence will allow New Windstream to grow its enterprise service capabilities and other competitive service offerings incorporating next generation technologies geared towards large business customers, and strengthen its ability to provide a competitive alternative to other providers' services.

The Reorganization will also have no effect on consumer rights. The transaction will not change the Windstream Licensees' policies with respect to its consumers or customer-facing operations, such as ordering, service installation, customer service, and billing, all of which will continue to be provided as before. Windstream's emergence from bankruptcy will be transparent to Windstream's customers, just as its operations have been while in the bankruptcy process.

Finally, the Reorganization will have no effect on universal service in the District of Columbia. Windstream and the Windstream Licensees do not offer universal service fund-supported services in the District of Columbia.

VI. Conclusion

By deleveraging the company and placing it on a sound financial footing, the Reorganization will allow the Windstream Licensees to emerge as stronger competitors, to the benefit of customers across the District of Columbia. Post emergence, New Windstream, through the Windstream Licensees, will continue to provide safe, reliable, high-quality public utility telecommunications services to customers without interruption, and without any substantial changes in the rates, terms, or conditions of service offered. Accordingly, Windstream respectfully requests that the Commission approve the Reorganization under D.C. Code § 34-1001 and 15 D.C.M.R. § 2511.2 no later than August 28, 2020, the date by which Windstream intends to complete the Reorganization.

Respectfully Submitted,

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VERIFICATION

STATE OF ARKANSAS §
§
COUNTY OF PULASKI §

I, Kristi Moody, state that I am the Executive Vice President – General Counsel & Corporate Secretary of Windstream Holdings, Inc.; that I am authorized to make this Verification on behalf of Windstream Holdings, Inc.; its wholly-owned subsidiary, Windstream Services, LLC; and Windstream Services, LLC's wholly owned subsidiaries, A.R.C. Networks, Inc., ATX Licensing, Inc., Broadview Networks, Inc., Business Telecom, LLC, Cavalier Telephone Mid-Atlantic, LLC, Choice One Communications Resale, L.L.C., Conversent Communications Resale, L.L.C., CTC Communications Corp., Intellifiber Networks, LLC, Masscomm, LLC, McLeodUSA Telecommunications Services, LLC, PAETEC Communications, LLC, US LEC of Virginia, LLC, and Windstream KDL, LLC; that I have read the foregoing document; and that the statements in the foregoing document with respect to Windstream Holdings, Inc., Windstream Services, LLC, and the Windstream Licensees are true and correct to the best of my knowledge, information, and belief.

Kristi Moody
Kristi Moody

Subscribed and sworn before me this 1st day of June, 2020.

Notary Public: Leslie Lovett

LESLIE LOVETT
MY COMMISSION # 12397077
EXPIRES: January 17, 2024
Pulaski County

My Commission expires: Jan 17, 2024

EXHIBIT A

Current Windstream Corporate Organizational Chart

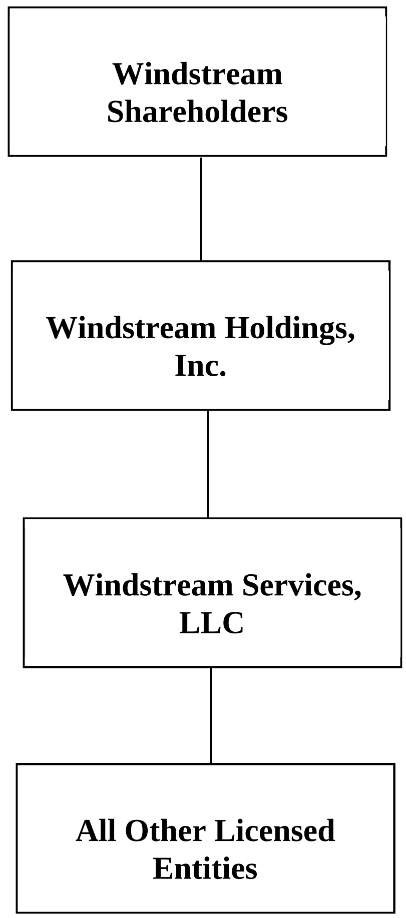

EXHIBIT B

Anticipated New Windstream Organizational Chart