

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1325 G STREET, NW, SUITE 800
WASHINGTON, DC 20005**

ORDER

March 26, 2019

**FORMAL CASE NO. TA 10-2, IN THE MATTER OF THE APPLICATION OF
WINDSTREAM HOLDINGS, INC., AND ITS INDIRECT SUBSIDIARIES FOR
APPROVAL OF CERTAIN PRO FORMA INTRA-COMPANY CHANGES, Order
No. 19872**

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) dismisses the Application of Windstream Holdings, Inc. (“Windstream”) and its indirect 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., Eureka Telecom, Inc., Intellifiber Networks, LLC, McLeodUSA Telecommunications Services, LLC, PAETEC Communications, LLC, US LEC of Virginia, LLC, and Windstream KDL, LLC (collectively, the “indirect subsidiaries” or “Applicants”) for approval of certain *pro forma* intra-company changes for lack of Commission jurisdiction.

II. BACKGROUND

2. On March 13, 2019, Windstream filed an Application seeking the Commission’s approval, to the extent required, of *pro forma* intra-company changes involving Windstream and several of its indirect subsidiaries.¹ According to Windstream the changes are being undertaken to consolidate the Windstream corporate structure and realign Windstream’s operating units to eliminate unnecessary and cumbersome intermediate companies in the Windstream corporate structure.² According to Windstream, the proposed *pro forma* intra-company changes will not result in any change to the ultimate ownership of the Applicants and that customers of the Applicants will continue to receive services from the Applicants under the same rates, terms and conditions

¹ *Formal Case No. TA 10-2, In the Matter of the Joint Application of Windstream Holdings, Inc. and its Indirect Subsidiaries for Approval of Certain Pro Forma Intra-Company Changes.* (“Formal Case No. TA10-2”), filed March 13, 2019 (“Application”).

² Application at 1.

of service as provided before the changes. Windstream believes that these transactions will be transparent and will have no impact on the customers of the indirect subsidiaries.³

A. Description of the Windstream and Indirect Subsidiaries

3. Windstream describes the parties to the transaction as indirect subsidiaries of Windstream. Windstream is a Delaware corporation headquartered in Little Rock, Arkansas. Windstream is also a publicly traded company and a leading provider of advanced network communications and technology solutions for consumers, small businesses, enterprise organizations and carrier partners across the U.S. Windstream offers bundled services, including broadband, security solutions, voice and digital TV to consumers. It also provides data, cloud solutions, unified communications and managed services to business and enterprise clients.⁴ According to the Application, the following indirect subsidiaries of Windstream hold competitive local exchange telecommunications authorizations in the District of Columbia (“District”): A.R.C. Networks, Inc., pursuant to Order No. 1187⁵; ATX Licensing, Inc., pursuant to Order No. 11290; Broadview Networks, Inc., pursuant to Order No. 11791; Business Telecom, pursuant to Order No. 11383; Cavalier Telephone Mid-Atlantic LLC pursuant to Order No. 12277; Choice One Communications Resale, L.L.C., pursuant to Order No. 15281; Conversent Communications Resale, L.L.C. is authorized to provide local exchange service pursuant to Order No. 15280; CTC Communications Corp., pursuant to Order No. 11383; Eureka Telecom, Inc. is authorized to provide local exchange service pursuant to Order No. 12231; Intellifiber Networks, LLC, pursuant to Order No. 15843; McLeodUSA Telecommunications Services, LLC pursuant to Order No. 12050; PAETEC Communications, LLC, pursuant to Order No. 11339; US LEC of Virginia, LLC, pursuant to Order No. 11362; and Windstream KDL, LLC, pursuant to Order No. 14848.⁶

B. Description of the *Pro Forma* Intra-Company Changes

4. Windstream asserts in the Application that it has acquired a number of existing telecommunications entities over several years that, either directly or through one or more operating subsidiaries, held federal and state authorizations and certifications to provide interstate and intrastate telecommunications services.⁷ Windstream contends that due to the complex corporate organizational structure resulting from these acquisitions, Windstream proposes a series of *pro forma* intra-company transactions that, once completed, will result in a more streamlined and simplified corporate structure. The simplified corporate structure, according to Windstream, will enable it to function in a more efficient and nimble fashion. Windstream states that these changes will all occur at the

³ Application at 1-2.

⁴ Application at 3.

⁵ The Application references Order No. 1187; however, the correct Order number is 11857.

⁶ Application at 3-4.

⁷ Application at 2.

holding company level and will not change the customer-facing operating entities.⁸ Windstream provides a chart depicting the current corporate organization of the Applicants and their parents as Exhibit A. Windstream intends to simplify its existing corporate structure in a way that streamlines the number of holding companies. Windstream provides a chart depicting the corporate organizational structure of Windstream upon completion of these *pro forma* intra-company changes as Exhibit C.⁹

5. Windstream explains that it believes its business would be more efficient from a management, operations, regulatory, accounting, financial, and customer experience perspective by streamlining its organization as much as possible. Windstream describes the intra-company process in the following manner.

6. First, Windstream Cavalier, a parent company of Cavalier Telephone Mid-Atlantic, LLC, will merge with its direct parent company, PAETEC, LLC, and PAETEC, LLC will survive (Exhibit B - Step 1). Second, PAETEC, LLC, will merge with its direct parent company, PAETEC Holding, LLC, and PAETEC Holding, LLC will survive (Exhibit B - Step 2). Third, Windstream Business Holdings, LLC, the parent company of Business Telecom, LLC, Choice One Communications Resale, L.L.C., Conversent Communications, L.L.C., and CTC Communications Corp. will merge with its direct parent company Windstream Eagle Holdings, LLC, and Windstream Eagle Holdings, LLC will survive (Exhibit B - Step 3). Fourth, Windstream Eagle Holdings, LLC, will merge into PAETEC Holding, LLC, and PAETEC Holding, LLC will survive (Exhibit B- Step 4). Fifth, Windstream BV Holdings, LLC, the parent company of A.R.C. Networks, Inc., ATX Licensing, Inc., Broadview Networks, Inc., and Eureka Telecom, Inc., will merge into PAETEC Holding, LLC, and PAETEC Holding, LLC will survive (Exhibit B - Step 5). Lastly, the equity interests of Windstream KDL, LLC a direct subsidiary of Windstream Services, LLC and Intellifiber Networks, LLC (a direct subsidiary of PAETEC Holding, LLC) will be contributed to a to-be-formed Delaware limited liability company, Windstream Fiber Networks, LLC. Windstream Fiber Networks, LLC will be a direct subsidiary of Windstream Services, LLC. As a result of the contribution, Windstream KDL, LLC and Intellifiber Networks, LLC will become and continue as direct subsidiaries of Windstream Fiber Networks, LLC (Exhibit B- Step 6).¹⁰

7. Windstream states that following the *pro forma* intra-company changes described above, PAETEC Holding, LLC's name will be changed to Windstream Enterprise Holdings, LLC. The latter entity, according to Windstream, is a holding company only and has no direct interaction with end user customers. Windstream asserts that this name change will have no effect on customers and does not require customer notification.¹¹

⁸ Application at 2.

⁹ Application at 2.

¹⁰ Application at 4-5.

¹¹ Application at 5.

C. Public Interest Considerations

8. Windstream asserts that the *pro forma* intra-company changes described in the Application are in the public interest. The *pro forma* changes will simplify Windstream's existing corporate structure and will reduce its reporting and accounting burdens thereby providing operational efficiencies that will allow Windstream to serve its customers in a more efficient and nimble fashion.¹² Windstream asserts that, because the *pro forma* changes will occur at the holding company level, there will be no change or impact to customers' rates, terms, or services as a result of the changes, and that all such changes will be transparent to customers. Finally, Windstream asserts that its subsidiaries described in the Application will continue to have the same corporate officers and there will be no change in the managerial qualifications of the telecommunications provider serving the customer base.¹³

III. COMMISSION DECISION

A. Transfer of Control

9. D.C. Code § 34-1001 sets forth the Commission's authority to review the transactions filed for Commission consideration and approval. In addition, 15 DCMR § 2511.2 provides the application requirements for entities seeking Commission approval for a corporate restructuring.¹⁴ The first step in this process, however, is for the Commission to determine whether it has authority to review and approve an application for transfer of control or a corporate restructuring, in accordance with D.C. Code § 34-1001. If it determines that it has authority to review the transaction in accordance with D.C. Code § 34-1001, then the Commission will conduct an analysis of the application based on the requirements provided in 15 DCMR § 2511.2.¹⁵ The relevant portion of D.C. Code § 34-1001 reads:

No franchise nor any right to or under any franchise to own
or operate any public utility as defined in this subtitle

¹² Application at 6.

¹³ Application at 6.

¹⁴ See 15 DCMR § 2511.2 (2015). Specifically, 15 DCMR § 2511.2 states: For any change of ownership or control involving a certificated local exchange carrier that must be approved by the Commission pursuant to D.C. Official Code § 34-1001 (2001), all of the entities involved in the transaction must file an application with the Commission at least sixty (60) days before the proposed closing date of the transaction.

¹⁵ See 15 DCMR § 2511.2(d) (2015) stating the five standards an application for transfer of control or other type of corporate reorganization must meet in order to receive Commission approval. The five standards are: (1) how the proposed transaction will affect competition in the District of Columbia; (2) how the proposed transaction will affect universal service; (3) how the proposed transaction will affect public safety and welfare; (4) whether the proposed transaction will affect the quality of local telecommunications services; and (5) how the proposed transaction will affect consumer rights.

shall be assigned [or] transferred . . . nor shall any contract or agreement with reference to or affecting any such franchise or right be valid or of any force or effect whatsoever unless the assignment, transfer . . . or agreement shall have been approved by the Commission in writing.¹⁶

10. A “public utility” is defined under D.C. Code § 34-214 as, *inter alia*, a “telephone corporation” or a “telephone line.”¹⁷ D.C. Code § 34-220 provides that a “telephone corporation” includes:

every corporation, company, association, joint-stock company or association, partnership, and persons, their lessees, trustees, or receivers . . . owning, operating, controlling, or managing any plant, wires, poles for the reception, transmission, or communication of messages by telephone, telephonic apparatus or instruments, or any telephone line or part of telephone line, used in the conduct of the business of affording telephonic communications for hire, or which licenses, lets, or permits telephonic communication for hire.¹⁸

11. D.C. Code § 34-221 states that a “telephone line” includes:

conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, and appliances, and all devices, real estate, franchises, easements, apparatus, fixtures, property, appurtenances, and routes used, operated, controlled, or owned by any telephone corporation to facilitate the business of affording telephonic communication for hire, or which licenses, lets, or permits telephonic communication.¹⁹

12. The Commission has interpreted D.C. Code §§ 34-1001, 34-214, 34-220 and 34-221 to mean that if a Competitive Local Exchange Carrier (“CLEC”) has facilities in the District of Columbia, then it can be classified as a public utility under the D.C. Code and therefore certain transactions, such as assignments or transfers, require prior Commission review and approval.²⁰ The Commission has also previously held that CLEC

¹⁶ D.C. Code § 34-1001 (2016).

¹⁷ D.C. Code § 34-214 (2016).

¹⁸ D.C. Code § 34-220 (2015).

¹⁹ D.C. Code § 34-221 (2015).

²⁰ See Formal Case No. 990, *In the Matter of Development of Local Exchange Carrier Quality of Service Standards for the District*, Order No. 13139, ¶ 22, rel. March 25, 2004; See also Formal Case No. 892, *In the Matter of Joint Application of CTC Communications Corp., Conversant Communications Resale*,

transactions concerning corporate reorganizations and restructurings that are purely intra-corporate in nature, and do not involve transfer of ownership or control to an outside entity or organization, only require a notification of the transaction. Purely intra-corporate CLEC restructurings or reorganizations are subject to dismissal by the Commission.²¹

13. In the instant matter, Commission review of the transaction indicates that it is a purely intra-company reorganization that does not involve a transfer of control to entities unrelated to Windstream. In addition, Windstream has also previously asserted in an unrelated filing that it does not own or lease facilities in the District and, therefore, is not a public utility under District statute.²² Accordingly, there is no need for the Commission to analyze the merits of this transaction because it is strictly an intra-company reorganization. Neither is there any basis to review the transaction in accordance with 15 DCMR § 2511.2 because Windstream is not a public utility under District statute. Consequently, the Commission will dismiss the Application for approval of the *pro forma* intra-company changes involving Windstream and its indirect subsidiaries for lack of Commission jurisdiction.

THEREFORE, IT IS ORDERED THAT:

14. The Application for approval of certain *pro forma* intra-company changes involving Windstream Holdings, Inc. and its indirect subsidiaries is **DISMISSED** for lack of Commission jurisdiction.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:



CHIEF CLERK:

**BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY**

L.L.C., and Choice One Communications Resale, L.L.C. for Approval of Pro Forma Intra-Company Changes, Order No. 16933, rel. October 12, 2012, citing Formal Case No. 968, Joint Application of AT&T Corporation and Teleport Communications Group, Inc., for Approval of a Transfer of a Franchise, Order No. 11532 at 5, rel. November 5, 1999, which provided the context for the Commission's authority to review certain transactions.

²¹ *Formal Case No. 892, In the Matter of the Joint Application of Business Telecom, LLC, Choice One Communications Resale L.L.C., Conversent Communications Resale, L.L.C., CTC Communications Corp., Earthlink Business, LLC, Earthlink Holdings Corp. and Windstream Holdings, Inc. for Approval of a Transfer of Control of the Earthlink Licensees, Order No. 18636 at 11, rel. December 15, 2016; citing Formal Case No. 892, In the Matter of the Joint Application of Sidera Networks, LLC for Approval of a Pro Forma Intra-Company Transaction, Order No. 17536, rel. July 10, 2014.*

²² *See Formal Case Nos. TA 1996-25 and TA 10-2, Joint Application of MassComm Inc. d/b/a MASS Communications and Windstream Holdings, Inc. to Transfer Indirect Control of MassComm, Supplement to Application, filed January 19, 2018.*