

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 20A-0244T

IN THE MATTER OF THE APPLICATION OF WINDSTREAM HOLDINGS, INC. TO
EXECUTE A TRANSFER PURSUANT TO 4 C.C.R. 723-2-2110.

COMMISSION DECISION APPROVING TRANSFER

Mailed Date: July 15, 2020
Adopted Date: July 15, 2020

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of a transfer application filed by Windstream Holdings, Inc. (Windstream Holdings or Applicant), on behalf of its eleven subsidiaries active in Colorado (Windstream Licensees) (collectively Windstream): Broadview Networks, Inc. (Broadview Networks); Business Telecom, LLC (BT); DeltaCom, LLC (DeltaCom); EarthLink Business, LLC (EarthLink); Masscomm, LLC, McLeodUSA Telecommunication Services, LLC (McLeodUSA); PAETEC Communications, LLC (PAETEC); Talk America, LLC (Talk America); Windstream Communications, LLC; Windstream Norlight, LLC; and Windstream NuVox, LLC. On February 27, 2019, Windstream notified the Commission of its commencement of a voluntary Chapter 11 filing, in the United States Bankruptcy Court for the Southern District of New York. Subsequently, Windstream secured debtor-in-possession financing and held negotiations with various creditor constituencies. Negotiations and related Bankruptcy proceedings have led to a Plan of Reorganization that will enable Windstream Holdings to achieve a deleveraged capital structure and obtain sufficient liquidity to fund its post-emergence business plan.

2. The Applicant requests Commission authorization to complete the intra-company and reorganization transactions necessary for Windstream Holdings to emerge from its bankruptcy proceeding commenced in February 2019 (the “Reorganization”). The Reorganization, which may include *pro forma* parent holding company corporate changes and/or internal asset transfers, will result in the creation of a reorganized Windstream parent structure (New Windstream) but no appreciable change in operations or customer services in Colorado. Following consummation of the Reorganization, which will occur entirely at the parent company level, Windstream 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.

3. On June 26, 2020 Windstream Holdings’ received final approval from the Bankruptcy court on its Reorganization plan.

4. We will construe this filing as an application for approval of the transfer of control of the Commission issued telecommunications authorities held by Windstream Licensees, pursuant to 4 *Code of Colorado Regulations* (CCR) 723-2-2110 of the Commission’s Rules Regulating Telecommunications Services and Providers of Telecommunications Services.

5. Windstream Holdings is the ultimate parent company of the Windstream Licensees and along with Windstream Services, LLC, are parent companies in the Windstream corporate structure. Neither Windstream Holdings nor Windstream Services, LLC hold Certificates of Public Convenience and Necessity (CPCN), Letters of Registration (LOR), or are otherwise registered to provide telecommunications services with the Commission.

6. Broadview Networks holds a Certificate of Public Convenience and Necessity (CPCN) that authorizes it to provide local exchange telecommunications services and a Letter of Registration (LOR) that authorizes it to provide emerging competitive services, including switched

access services. The Commission issued these authorities by Decision No. C11-0761, Proceeding No. 11A-523T on July 13, 2011. The company is also a registered interexchange provider.

7. EarthLink holds a CPCN and an LOR to provide local exchange and emerging competitive services, including switched access. These were granted by the Commission in Decision No. C13-0211, Proceeding No. 12A-1292T, effective on February 14, 2013. EarthLink is also a registered interexchange provider.

8. McLeodUSA holds a CPCN that authorized it to provide local exchange and emerging competitive services on a resale-only basis that was granted in Decision No. R97-329, Proceeding No. 96A-495T, issued on March 27, 1997. It was granted facilities based authority to provide its services, including switched access, in Decision No. C98-581, Proceeding No. 98A-187T, issued on June 16, 1998. McLeodUSA has also registered as an interexchange provider.

9. PAETEC received authority to provide local exchange telecommunications services, including switched access, in Decision No. C99-0995 in Proceeding No. 99A-373T, issued on September 14, 1999. The company is also registered as an interexchange provider.

10. Talk America holds a CPCN authorizing it to provide local exchange and emerging competitive telecommunications services, which certificate was granted by Decision No. C00-1388, Proceeding No. 00A-584T, issued December 11, 2000. Talk America is also a registered interexchange provider.

11. Windstream NuVox, LLC holds a CPCN and an LOR authorizing it to provide local exchange and emerging competitive telecommunications services. These were granted by the Commission in Proceeding 11A-204T, Decision No. C11-0424, effective on April 4, 2011.

12. Windstream Communications, LLC is exclusively a registered toll reseller or interexchange carrier.

13. MassComm, LLC is a registered VoIP provider and is registered in the TRS (Telecommunications Relay Services) program.

14. Windstream Norlight, LLC is authorized to provide resold interexchange services pursuant to the applicable form filed with the Commission on December 16, 2008.

15. BT and DeltaCom are registered with the Commission as interexchange providers and do not hold any Commission issued authority to provide telecommunications services.

16. On June 4, 2020, a notice of Application to transfer was provided to all persons, firms, or corporations interested in or affected by the grant or denial of the requested relief. Interventions were due on or before July 6, 2020. No interventions were filed.

B. Discussion

17. The Commission has jurisdiction over this Application pursuant to §§ 40-5-105, 40-15-204, and 40-15-303, C.R.S.

18. The Application contains all of the information required by the applicable Commission Rules and is therefore deemed complete.

19. The Application is unopposed and therefore may be considered without a formal hearing, pursuant to § 40-6-109(5), C.R.S.

20. Upon emergence from bankruptcy, the Windstream may undergo a *pro forma* reorganization of its holding company structure, and may undertake internal asset transfers, through which New Windstream will become the ultimate parent of Windstream Holdings' subsidiaries, including the Windstream Licensees, and will indirectly hold all licenses and

authorizations held by Windstream and its subsidiaries. These changes will not affect the form or organization of the Windstream Licensees.

21. Upon reorganization, a substantial majority of the post-emergence equity in New Windstream will be held by subsidiaries, affiliates, or affiliated entities of six investment companies that are first lien debt holders of Windstream Services' debt today (collectively with their subsidiaries, affiliates, and affiliated entities, the "First Lien Investors"). Creditors who hold Windstream Services, the immediate subsidiary of Windstream Holdings, upon reorganization will then hold 100 percent of the equity interests in the ultimate parent entity of Windstream Licensees, New Windstream.

22. 4 CCR 723-2-2110(a)(II) of the Commission's Rules Regulating Telecommunications Services and Providers of Telecommunications Services, requires that the applicant provide the name under which the transferee or encumbering entity is, or will be, providing service. The name of the ultimate parent entity for New Windstream has not yet been determined. Any changes will be at the holding company level and will not affect the form or organization of Windstream Licensees, nor will it affect the names of the Windstream Licensees with which Colorado customers are accustomed. Windstream represents that it will provide the Commission with an update regarding the reorganization, including the name of New Windstream's parent entity, within 60 days following its emergence from bankruptcy.

23. Several of the Windstream Licensees are competitive local exchange providers, some holding LORs, with Commission issued authorities. Except for limited circumstances (such as for providers that are recipients of state high cost support and for the provision of basic emergency services), certifications to provide basic local exchange services are no longer regulated by the Commission. *See* § 40-15-401(1)(b), C.R.S. Similarly, the provision of any other emerging competitive services such as advanced features, premium services, intraLATA toll, non-optional

operator services, and private line services, except switched access services and basic emergency services, are no longer regulated by the Commission. *See* §§ 40-15-401(1)(e), (k), (n), (o), (s), (t), C.R.S. Consequently, the Commission does not have the authority to approve the transfers of the CPCNs or those parts of the Letters of Registration addressing advanced features, premium services, intraLATA toll, non-optional operator services, and private line services.

24. Switched access services and the provision of basic emergency services have not been deregulated. As a result, the Commission has the authority to review and approve/deny the transfers and encumbrances of the part of authorities held by providers that address those services.

25. We remind applicants that public utilities remain subject to Commission oversight including, but not limited to, reporting and payment obligations to the Colorado High Cost Support Mechanism and the Telecommunications Relay Services Program.

26. We find that the proposed transfer of control of any telecommunications authorities held by Windstream Licensees is not contrary to the public interest and therefore grants the Application for transfer of control to that extent. The Application recognizes the Commission's jurisdiction as it now exists. Entities that hold Commission issued authorities remain obligated to comply with any applicable requirements or regulations as stated in Article 15 of Title 40.

II. ORDER

A. The Commission Orders That:

1. The Application to transfer filed by Windstream Holdings, Inc. is deemed complete. The request to transfer control of the Commission issued authorities held by Windstream Licensees identified and described in the Application and above, is granted.

2. Windstream Holdings, Inc. or its authorized representatives shall jointly notify the Commission if the transfer of control has been terminated or is not completed within 60 days of the proposed effective date stated in the Application or if the proposed transfer terms are changed

prior to the consummation date. The notice shall include the proceeding and decision number(s) which granted the authority to execute the transfer. Windstream Holdings, Inc. shall also notify the Commission of the ultimate parent name of Windstream Licensees, within 60 days of the proposed effective date of transfer.

3. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision.

4. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
July 15, 2020.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JEFFREY P. ACKERMANN

JOHN GAVAN

MEGAN M. GILMAN

Commissioners