

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

IN THE MATTER OF

DOCKET NO. 2020-00179

Electronic Application Of Windstream Holdings, Inc., Windstream Services, LLC, American Telephone Company, LLC, Broadview Networks, Inc., Business Telecom, LLC, CTC Communications Corporation, DeltaCom, LLC, EarthLink Business, LLC, EarthLink Carrier, LLC, McLeodUSA Telecommunications Services, LLC, Network Telephone, LLC, PAETEC Communications, LLC, Talk America, LLC, The Other Phone Company, LLC, US LEC of Tennessee, LLC, Windstream Communications, LLC, Windstream KDL, LLC, Windstream Kentucky East, LLC, Windstream Kentucky West, LLC, Windstream Norlight, LLC, Windstream NTI, LLC, Windstream NuVox, LLC For Approval for an Order Approving the Acquisition of Common Stock by Elliott Management Corporation, Pacific Investment Management Company LLC, Oaktree Capital Group, HBK Capital Management, and Franklin Resources Inc.

APPLICATION

Windstream Holdings, Inc., a Delaware corporation, and Windstream Services, LLC, a Delaware limited liability company (collectively, “Windstream”) with American Telephone Company, LLC; Broadview Networks, Inc.; Business Telecom, LLC; CTC Communications Corporation; DeltaCom, LLC; EarthLink Business, LLC; EarthLink Carrier, LLC; McLeodUSA Telecommunications Services, LLC; Network Telephone, LLC; PAETEC Communications, LLC; Talk America, LLC; The Other Phone Company, LLC; US LEC of Tennessee, LLC; Windstream Communications, LLC; Windstream KDL, LLC; Windstream Kentucky East, LLC;

Windstream Kentucky West, LLC; Windstream Norlight, LLC; Windstream NTI, LLC, Windstream NuVox (collectively, the “Windstream Licensees,” and, together with Windstream, the “Applicants”) pursuant to KRS 278.020(6) and KRS 278.020(7), respectfully request that the Kentucky Public Service Commission (the “Commission”) grant authority, to the extent it may be required, for Applicants to consummate the two-step transaction described below (the “Transaction”). As described below, approval of this Joint Application will permit Applicants to emerge from bankruptcy and continue to provide high-quality public utility telecommunications services to Kentucky customers without interruption, without a transfer of customers, and without any resulting changes in rates, terms, or conditions of service.

Emergence of Windstream from Chapter 11 as soon as practicable is critical for the success of the reorganization and the continued competitive viability of Windstream, including its Kentucky operations. Consequently, Applicants propose to complete the Transaction on or before August 28, 2020. Applicants respectfully request that the Commission grant this Joint Application expedited review and approval so that the Transaction may close as soon as possible consistent with the proposed consummation date.

In support of this Joint Application, Applicants provide the following information:

I. INTRODUCTION

1. On February 25, 2019, each of the Applicants, including the Windstream Licensees, commenced with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) a voluntary case under chapter 11 of Title 11 of the United States Code.¹ Following the filing of these petitions and the securing of \$1 billion in debtor-in-possession financing, Windstream’s operating subsidiaries, including the Windstream Licensees,

¹ Windstream notified the Commission of the bankruptcy filings by letter dated February 26, 2019.

continued to provide uninterrupted service to its customers as it negotiated a comprehensive restructuring plan with its creditors. On April 1, 2020, Windstream filed a plan of reorganization proposing a restructuring that would allow it and its subsidiaries to emerge from Chapter 11 with a deleveraged capital structure and sufficient liquidity to fund the company's post-emergence business plan.² The plan of reorganization was amended on May 6, 2020.³ No competing reorganization plans have been filed or are expected to be filed, and the Bankruptcy Court has scheduled a hearing to consider confirmation of the plan of reorganization, presently set for June 24, 2020.

As contemplated by the plan of reorganization, the interests held by the existing stockholders of Windstream will be canceled and 100% of the new equity in New Windstream⁴ will be issued to the company's first lien debtholders (the "Lenders") on the terms set forth in the plan of reorganization. Following consummation of the Transaction, 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

² See Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. et al., Pursuant to Chapter 11 of the Bankruptcy Code, Case No. 19-22312 (Bankr. S.D.N.Y. entered Apr. 1, 2020); Disclosure Statement Relating to the Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. et al., Pursuant to Chapter 11 of the Bankruptcy Code, Case No. 19-22312 (Bankr. S.D.N.Y. entered Apr. 1, 2020). Copies of the Plan and associated disclosure statement are provided as exhibits to the related application pending before the Federal Communications Commission ("FCC"), which is available at [https://ecfsapi.fcc.gov/file/1052134857662/Consolidated%20Section%20214%20Application%20Narrative%20-%20Domestic%20\(5-21-2020\).pdf](https://ecfsapi.fcc.gov/file/1052134857662/Consolidated%20Section%20214%20Application%20Narrative%20-%20Domestic%20(5-21-2020).pdf).

³ Notice of Filing First Amended Joint Chapter 11 Plan of Reorganization of Windstream Holdings, Inc. et al., Pursuant to Chapter 11 of the Bankruptcy Code, Case No. 19-22312 (Bankr. S.D.N.Y. entered May 6, 2020).

⁴ Given the cancellation of the interests held by existing stockholders and the issuance of new equity to new stockholders, the Application will refer to post-emergence Windstream Holdings, Inc. as "New Windstream." In addition, the reorganization may ultimately call for pro forma restructuring, which may include an additional holding entity, or internal transfers upon emergence, in which case the Applicants will provide an update to the Commission.

increased capability to compete to bring advanced telecommunications services to current and new customers.

2. No assignment of licenses or customers by the Windstream Licensees will occur as a consequence of the proposed Transaction. Nor will the Transaction result in changes to the Windstream Licensees' customer-facing systems or operations or in any disruption to service. Indeed, emergence from bankruptcy will be transparent to customers, just as the operations of the Windstream Licensees have been while under the bankruptcy process.

3. Immediately following the consummation of the Transaction, the Windstream Licensees will continue to provide service to their existing customers pursuant to the same rates, terms, and conditions in effect at the time of this filing. Accordingly, this Transaction will be, for all practical purposes, imperceptible to the customers of the Windstream Licensees. The proposed Transaction will not adversely affect competition in the Commonwealth because it does not contemplate any horizontal or vertical concentration in any market, including the Commonwealth, and customers will continue to have access to the same competitive alternatives they have today.

II. PARTIES TO THE TRANSACTION

A. The Windstream Companies

1. Windstream

4. Windstream Holdings, Inc. is a Delaware corporation organized on May 23, 2013, headquartered at 4001 North Rodney Parham Road, Little Rock, Arkansas 72212, with stock traded in the "Over the Counter" ("OTC") market under the symbol "WINMQ." Windstream Holdings, Inc. is a holding company and is not a utility as the term is defined at KRS 278.010(3).

5. Windstream Services, LLC, a Delaware limited liability company, organized on March 1, 2004, is also headquartered at 4001 North Rodney Parham Road, Little Rock, Arkansas 72212. Windstream Services is a direct, wholly-owned subsidiary of Windstream Holdings. Windstream Services is a holding company and is not a utility as the term is defined at KRS 278.010(3).

6. As evidenced by **EXHIBIT 1** to this application, Windstream is in good standing in the State of Delaware. Because Windstream Holdings, Inc. and Windstream Services, LLC are holding companies (certificates of authority included as **EXHIBIT 2**), neither operates as a utility or directly transacts business in the Commonwealth. Windstream joins this application only to the extent required by KRS 278.020. The Windstream Licensees, which are the entities transacting business in Kentucky are authorized to transact business in the Commonwealth. Windstream, through its subsidiaries, is a leading provider of advanced network communications and technology solutions for consumers, businesses, enterprise organizations, and wholesale customers across the United States.

2. Windstream Licensees

7. Windstream's operating subsidiaries offer services in all fifty states and the District of Columbia. In the Commonwealth of Kentucky, the Windstream Licensees are authorized to operate as follows

- American Telephone Company LLC is authorized to provide resold local exchange services under Utility ID 5056520 and resold interexchange services under Utility ID 5179180.
- Broadview Networks, Inc. is authorized to provide local exchange services pursuant to Utility ID 5056480 and interexchange services pursuant to Utility ID 5177100.

- Business Telecom, LLC is authorized to provide local exchange services pursuant to Utility ID 22251011 and interexchange services pursuant to Utility ID 5101100.
- CTC Communications Corp. is authorized to provide interexchange services pursuant to Utility ID 5144700.
- DeltaCom, LLC is authorized to provide local exchange services pursuant to Utility ID 22251072 and interexchange services pursuant to Utility ID 5107200.
- EarthLink Business, LLC is authorized to provide local exchange services pursuant to Utility ID 5108200 and interexchange services pursuant to Utility ID 22250580.
- EarthLink Carrier, LLC is authorized to provide interexchange services pursuant to Utility ID 5108200 and operator services pursuant to Utility ID 22251082.
- McLeodUSA Telecommunications Services, LLC is authorized to provide local exchange services pursuant to Utility ID 22251262 and interexchange services pursuant to Utility ID 5126200.
- Network Telephone, LLC is authorized to provide local exchange services pursuant to Utility ID 5007600 and interexchange services pursuant to Utility ID 22250076.
- PAETEC Communications, LLC is authorized to provide local exchange services pursuant to Utility ID 22251445 and interexchange services pursuant to Utility ID 5144500.
- Talk America, LLC is authorized to provide local exchange services pursuant to Utility ID 5051890, interexchange services pursuant to Utility ID 5100700, and operator services pursuant to Utility ID 22251007.
- The Other Phone Company, LLC is authorized to provide local exchange services pursuant to Utility ID 5010600 and interexchange services pursuant to Utility ID 22250106.
- US LEC of Tennessee, LLC is authorized to provide local exchange services pursuant to Utility ID 5050370, interexchange services pursuant to Utility ID 22205037, and operator services pursuant to Utility ID 33305037.
- Windstream Communications, LLC is authorized to provide local exchange services pursuant to Utility ID 33351184, interexchange services pursuant to Utility ID 5118400, and operator services pursuant to Utility ID 22251184.

- Windstream KDL, LLC is authorized to provide local exchange services pursuant to Utility ID 22251009 and interexchange services pursuant to Utility ID 5100900.
- Windstream Kentucky East, LLC is authorized to provide incumbent local exchange services pursuant to Utility ID 5022700.
- Windstream Kentucky West, LLC is authorized to provide incumbent local exchange services pursuant to Utility ID 11000.
- Windstream Norlight, LLC is authorized to provide local exchange services pursuant to Utility ID 22213700, interexchange services pursuant to Utility ID 13700, and operator services pursuant to Utility ID 33313700.
- Windstream NTI, LLC is authorized to provide local exchange services pursuant to Utility ID 5056180 and interexchange services pursuant to Utility ID 5177600.
- Windstream NuVox, LLC is authorized to provide local exchange services pursuant to Utility ID 5005500 and interexchange services pursuant to Utility ID 22250055.

Each of the Windstream ILEC Licensees is an Electing Carrier as the term is defined at KRS 278.541(2).

8. The electronic mail address for the Applicants is Nicole.Winters@windstream.com. Information required by 807 KAR 5:001, Section 14 about the corporate organization of the Windstream Licensees and their mailing addresses, along their respective electronic mail addresses and proof that each is in good standing in the state of Kentucky, is attached as **EXHIBIT 3** to this application. The Windstream Licensees are authorized to transact business in the Commonwealth of Kentucky. Copies of their certificates of authorization are attached as **EXHIBIT 4**.

B. Investor Entities

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 affiliates, the "First Lien Investors"): (1) Elliott Management Corporation; (2) Pacific Investment Management Company LLC; (3) Oaktree Capital Group; (4) HBK Capital Management; (5) Franklin Resources Inc. operating as Franklin Templeton; and (6) Brigade Capital Management, L.P.

1. Elliott Windstream Aggregator L.P.

9. Elliott Management Corporation and its advisory affiliates, including Elliott Investment Management, L.P. (collectively, "Elliott"), headquartered at 40 W. 57th Street, New York, New York 10019, manage multi-strategy hedge funds and other investment vehicles with over \$40 billion in assets under management. Elliott is one of the oldest firms of its kind under continuous management. Elliott provides discretionary investment advice and other services to private investment funds and co-investment commitments, trades in securities across the capital structure, and often will take a leading role in event-driven situations to create value or manage risk.

10. Under the proposed transaction Elliott's equity interest in New Windstream would be held through its two principal investment funds: Elliott Associates, L.P., a Delaware limited partnership, and Elliott International, L.P. a Cayman Islands limited partnership. Elliott and its affiliates are anticipated to ultimately hold an estimated aggregate of 40.3% of the voting equity in New Windstream indirectly through an aggregator entity, Nexus Aggregator L.P., a Delaware

limited partnership.⁵ When the Windstream Licensees initially emerge from Chapter 11 Bankruptcy protection, Elliott will temporarily hold a 49.9% share in New Windstream until the FCC approves the exercise of warrants by foreign investors, described below. Neither Nexus Aggregator L.P. nor Elliott currently provide or will provide utility services in the Commonwealth after the Transaction, and neither are or are expected to be utilities as the term is defined at KRS 278.010(3).

2. Other Owners

11. The remaining First Lien Investors, consisting of funds controlled by five other investment companies, are anticipated to hold approximately 40.9% of the equity in Windstream post-consummation.⁶ These investment companies are: (1) Pacific Investment Management Company LLC (“PIMCO”), and its subsidiaries, which is a global investment management firm that is headquartered at 650 Newport Center Drive, Newport Beach, California 92660 and one of the largest investment management firms in the U.S. with almost \$2 trillion of assets under management; (2) Oaktree Capital Group, and its subsidiaries (“Oaktree”), which is a global investment management firm that is headquartered at 333 S. Grand Avenue, 28th Floor, Los Angeles, California 90071, and has additional offices in eighteen other locations in in the United

⁵ The ultimate percentage interest held by each First Lien Investor in new Windstream will depend on the exercise of subscription rights for Windstream equity interests by creditors including the backstop parties pursuant to the Backstop Commitment Agreement described in the reorganization plan. The percentages set forth in this Application represent the anticipated interests assuming full participation in the rights offering, and (in the event of more limited participation) may ultimately be modestly higher, although this is highly unlikely to result in entities affiliated with Elliott holding an economic interest in New Windstream exceeding 50%. The Applicants will promptly notify the Commission in the event that the exercise of rights under the Backstop Commitment Agreement results in any material changes to the amounts held by the First Lien Investors, and will confirm final percentages held in New Windstream in applicable post-consummation notices.

⁶ Subject to the exercise of rights under the Backstop Commitment Agreement described in note 6, *supra*.

States, Europe, the Middle East, East Asia and Australia; (3) HBK Capital Management (“HBK”), which is an investment firm that is headquartered at 2300 North Field Street, Suite 2200, Dallas, TX 75201, with additional offices New York, London, and Charlottesville, Virginia; (4) Franklin Resources Inc. (NYSE: BEN), operating as Franklin Templeton (“Franklin”), which is a U.S. global investment firm headquartered at One Franklin Parkway, Building 970, 1st Floor, San Mateo, California 94403; and (5) Brigade Capital Management, L.P., headquartered at 399 Park Avenue, Suite 1600, New York, NY 10022. As described below, each of these entities is solely an investment holding company with no other operations than to hold debt interests and, ultimately, equity in New Windstream. When the Transaction is completed, it is anticipated that, other than Elliott (as described above) only PIMCO will control an ownership interest of ten percent (10%) or more of New Windstream. None of the Remaining First Lien Holders currently provide or will provide utility services in the Commonwealth after the Transaction; the Remaining First Lien Holders currently are not, and are expected to be, utilities as the term is defined at KRS 278.010(3).

III. DESCRIPTION OF THE TRANSACTION

12. As is common in bankruptcy situations, the interests held by the stockholders of Windstream Licensees’ 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 equity⁷ in the New

⁷ 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.

Windstream.⁸ As noted above, a substantial majority of New Windstream's equity will be held by subsidiaries, affiliates or affiliated entities of the First Lien Investors: (1) Elliott ; (2) PIMCO; (3) Oaktree; (4) HBK; (5) Franklin; and (6) Brigade.⁹

13. The Transactions, which are also subject to review and approval by the FCC, are expected to occur in two steps, described below. Applicants are using this 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.¹⁰ 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

⁸ The reorganization may involve *pro forma* changes to the holding company structure and/or 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.

⁹ As part of the process of emergence from bankruptcy, certain creditors (other than the First Lien Investors) will have the right to obtain equity in New Windstream. In addition, a small amount of equity may be allocated to other functions, such as a management incentive plan. As a result, the exact ownership percentages of the new owners of New Windstream will not be finalized until the company emerges from bankruptcy and the first step of the two-step process described in the text below is completed. Applicants will provide the Commission with a notice of consummation at the completion of each step of the process, along with ownership details available at that time.

¹⁰ Windstream Holdings affiliates hold FCC common carrier wireless spectrum licenses and Section 214 authorizations. *See 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).

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:

14. First, the company emerges from bankruptcy, with its equity acquired by investors whose individual and combined foreign ownership are both 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 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.

15. Under this two-step process, Windstream 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.¹¹ 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.

¹¹ 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.

16. Here, Applicants respectfully request that the Commission issue an order approving the Transaction—that is, approving the complete two-step process described above. Applicants request approval, to the extent required¹², of both (1) the initial reorganization of Windstream and issuance of equity and warrants by which the First Lien Investors will come to own equity in New Windstream, as described above; and (2) the ultimate exercise of those warrants. This will permit Windstream to emerge from bankruptcy more quickly, while at the same time accommodating all appropriate regulatory reviews. As a result of the reorganization, the company's debt will be reduced by approximately 50%. Thus, the proposed transaction will effectively deleverage the company and place it on a sound financial footing, enabling it to expand its current investment in enhanced customer experience, product innovation and infrastructure.

17. Moreover, as part of the bankruptcy proceeding, on March 6, 2020, Windstream filed a motion with the Bankruptcy Court seeking approval of a renegotiated agreement between Windstream and Uniti Group Inc. (“Uniti”)¹³ for Windstream's use of Uniti's network assets to support its provision of service to its customers.¹⁴ This agreement settles certain claims and causes of action asserted by Windstream during the bankruptcy process against Uniti, permits Uniti to purchase certain assets from Windstream's subsidiaries and improves via amendment to

¹² The Commission's Orders in Administrative Case Nos. 359 and 370 exempt competitive local exchange carriers and interexchange carriers from the requirements of KRS 278.020.

¹³ Uniti Group, Inc. is the ultimate parent company of Communication Sales and Leasing, Inc. and its subsidiary, CSL Kentucky System, LLC. CSL Kentucky System, LLC was granted a certificate of public convenience and necessity by orders dated December 4, 2014 and December 29, 2019 in Case No. 2014-00328.

¹⁴ Notice of Debtors' Motion for Entry of an Order Approving the Settlement Between the Debtors and Uniti Group Inc., Including (I) the Sale of Certain of the Debtors' Assets Pursuant to Section 363(B) and (II) the Assumption of the Leases Pursuant to Section 365(A), Case No. 19-22312 (Bank. S.D.N.Y. entered Mar. 6, 2020).

the terms and conditions of the existing Uniti agreement. The Bankruptcy Court approved the agreement on May 8, 2020.¹⁵

18. The Transaction allows for new ownership interests in Windstream only. The Transaction will not involve a change of service provider for any customer of the Windstream Licensees. Indeed, the change of ownership of Windstream is expected to be transparent to the Windstream Licensees' customers.

19. For the Commission's convenience, corporate organization charts for pre- and post-Transaction are provided as **EXHIBIT 5**.

IV. REQUEST FOR APPROVAL UNDER KRS 278.020(6) AND KRS 278.020(7)

20. The Applicants respectfully request that the Commission grant approval expeditiously so as to enable the Applicants to move forward with a stable capital structure, uninterrupted service, and an increased capability to compete to bring advanced services to Kentucky consumers. As more fully discussed herein, the transaction clearly satisfies the applicable criteria imposed in KRS 278.020(6) and KRS 278.020(7). The Applicants believe that the Plan is in the public interest, as well as the best interests of Windstream, its subsidiaries, and their respective customers, employees, suppliers, vendors, creditors, and other key constituencies because it will position Windstream to emerge from bankruptcy protection financially stronger and materially better positioned to compete effectively in the U.S. telecommunications and cloud services markets. Windstream, following the Transaction, will

¹⁵ See Order Approving the Settlement Between the Debtors and Uniti, Case No. 19-22312 (Bank. S.D.N.Y. entered May 12, 2020).

continue to have the capability (enhanced by the Transaction) to provide high quality telecommunications services and introduce advanced services.

A. KRS 278.020(6)

21. Although an indirect ownership interest will be transferred to the First Lien Investors through the Transaction, they will not operate or provide telecommunications services in Kentucky. Instead, the Windstream Licensees will continue to provide telecommunications services to the public in the Commonwealth. Accordingly, the Applicants respectfully submit that the proper inquiry under KRS 278.020(6) (and KRS 278.020(7), which is addressed below) is whether Windstream—following the Transaction and in connection with its support of the operations of the Windstream Licensees—and the Windstream Licensees will continue to have the financial, technical, and managerial ability to provide reasonable service in the Commonwealth. They clearly will, because other than the improvements in Windstream’s capital structure and financial position resulting from its emergence from bankruptcy, nothing will change. Windstream will continue to possess the financial, technical, and managerial ability to support the Windstream Licensees in their provision of reasonable service in the Commonwealth.

22. KRS 278.020(6) provides that the Commission shall grant approval if “the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.” To the extent Commission approval is required, the Transaction satisfies these standards. Following the Transaction, the Windstream Licensees, as part of Windstream, will possess an enhanced financial ability to provide the certificated services to the public. Likewise, the Applicants anticipate significant continuity in Windstream’s management team following the Reorganization, and the Windstream Licensees will thus continue to be managed and operated by

capable, experienced executives and employees under the Windstream corporate structure. The Windstream Licensees will therefore maintain the same technical and managerial ability to providing reliable, high-quality services as they do today. All of these factors, along with the additional details below, demonstrate that Windstream will continue to possess the financial, technical, and managerial ability necessary to support the Windstream Licensees in the provision of reasonable and high quality service.

1. Continued Financial Capability

23. The proposed Transaction will facilitate the emergence of Windstream and its subsidiaries from bankruptcy with substantially less debt and improved operational and network use arrangements with Uniti, while providing compensation to their creditors. Upon emerging from Chapter 11 protection as financially stronger competitors, they will be well positioned to continue delivery of their comprehensive portfolio of innovative communication solutions to customers in Kentucky and across the United States. Consequently, the proposed Transaction will enhance Windstream's presence in the telecommunication markets to the ultimate benefit of customers without harming customers or competitors in any market sector.

24. The proposed Transaction will have no adverse effects upon Kentucky or the intrastate telecommunications market. Windstream and its subsidiaries will continue to exist after the Transaction; the Transaction, therefore, does not eliminate any market participants. Nor will the proposed Transaction, in any respect, reduce the service choices available to consumers. Indeed, approval of the transfer of control will increase competition. It will allow a much more stable and solvent Windstream, with a stronger capital structure, better access to capital, and freed from the operational constraints of bankruptcy, to drive investment in advanced services, enhanced customer service, and competitive offerings for the residential and enterprise markets.

In particular, the Commission's approval of the reorganization and emergence from bankruptcy will enable Windstream and its subsidiaries to:

- start accessing the benefits of Windstream's renegotiated agreement with Uniti, under which \$1.75 billion in network capital improvements (spread over 10 years) will support an expanded fiber-optic network which will enable Gigabit speeds—enhancing the broadband capabilities available to both residential and small and medium businesses in those areas and placing Windstream in a better position to offer competitive alternatives to services offered by cable operators;
- invest in their enterprise service capabilities and other competitive service offerings incorporating next generation technologies geared towards large business customers, strengthening their ability to provide a competitive alternative to incumbent providers' services;
- continue their investments in customer service and support, enhancing their customer experience and satisfaction; and
- be better positioned, with enhanced financial and operational flexibility, to participate in Commission broadband deployment funding auctions, such as the Rural Digital Opportunity Fund, to facilitate the deployment of rural broadband in Kentucky.

25. With far less debt, access to an improved network, and better access to capital, Windstream will accordingly be positioned as a stronger competitor for both the residential and small and medium business markets inside its ILEC footprint and for the enterprise market outside of it.¹⁶ These advances serve and are consistent with the public interest.¹⁷

26. Attached as **EXHIBIT 6** are audited financial statements of Windstream for the twelve months ended December 31, 2019. Attached as **EXHIBIT 7** are financial projections for

¹⁶ US LEC of Tennessee is a guarantor on Windstream's existing debt. Upon consummation of the first step of the Transaction, and as is common in bankruptcy situations, the existing debt will be extinguished and replaced with new debt. US LEC of Tennessee will remain a guarantor, on the debt of New Windstream. Review is exempted by the Commission's orders in Administrative Case No. 359 and Administrative Case No. 370.

¹⁷ See Frontier Communications Corp. and Verizon Communications, Inc., *Memorandum Opinion and Order*, 30 FCC Rcd. 9812, 9825-29 at ¶¶ 31, 32, 34, 38 (2015) (finding that improved broadband services made possible by a transaction would likely result in benefits to consumers).

Windstream, filed with the Bankruptcy Court in connection with the May 6, 2020 filing of its “Disclosure Statement” associated with the Plan of Reorganization filed at that time. As these documents show, Windstream and its subsidiaries will possess the financial ability to succeed in the ever-increasing competitive telecommunications marketplace.

27. The Windstream Licensees currently serve approximately 266,000 access lines in Kentucky. The number of access lines will not change as a result of the Transaction. No changes to the customer-facing systems or operations or any disruption to service by any of the Windstream Licensees are contemplated as part of the Transaction.

28. Windstream, which among other functions raises capital for its subsidiaries, will continue to possess the financial capability, enhanced by the Transaction, to enable the Windstream Licensees to continue to provide high-quality telecommunications services to customers. Moreover, Windstream, through its subsidiaries, will continue to be one of the largest independent local exchange carriers in the nation. By lowering Windstream’s debt, improving its leverage ratio, and increasing cash flow, the Transaction will increase Windstream’s ability to raise capital in order to invest in network, employees and information systems.

29. As a result, Windstream and its subsidiaries, including the Windstream Licensees, will continue to have the financial ability to provide reasonable service in the Commonwealth.

2. Continued Managerial Capability

30. The proposed Transaction also ensures continuity of operations for Windstream and its subsidiaries, including the Applicants, to the ultimate benefit of customers. Because the proposed Transaction is structured only as a change of ownership at the holding company level,

it will not affect any of the operations of Windstream or its subsidiaries. The Windstream Licensees will continue to employ personnel experienced at and dedicated to providing high-quality communications service. For example, the local operations will continue to be staffed and managed by employees who have established ties to the community and extensive knowledge of the local telephone business.

31. The Windstream Licensees will continue to receive the same centralized management services that they receive today and have received in the past. The same experienced and knowledgeable persons currently providing these services will continue to do so. Presently, Windstream centralizes functions including finance, tax, planning, strategic marketing, procurement, and customer care, to the benefit of the customers of the Windstream licensees. After the Transaction, the Windstream Licensees will continue to receive similar centralized management services, and thus will continue to enjoy the attendant efficiencies and the benefits of an experienced staff.

32. As a result, Windstream and the Windstream Licensees will continue to have the managerial ability to provide reasonable service in the Commonwealth.

3. Continued Technical Capability

33. Windstream and its subsidiaries will continue to possess the same technical capabilities that they possess today after the Transaction. Customers in Kentucky will continue to have the same service providers and will continue to receive substantially the same services and the same rates, terms and conditions of service. Windstream's wireline, fixed wireless, and broadband customers, whether residential or business, will all benefit from continuing access to uninterrupted telecommunications and information services. Any future changes will result from

the normal course of business operations, as was the case prior to the proposed transaction. The proposed transaction will result in no disruption to any customer facing operations such as ordering, service installation, customer service, and billing, which will continue to be provided as before. This restructuring and the newly configured financial resources available to Windstream should ensure that they continue to offer competitive, high-quality communications and cloud service offerings to customers throughout the United States. At the same time, the proposed Transaction will have no adverse impact on the current customers of Windstream. The proposed transaction will thus be transparent to the customers of Windstream and its subsidiaries.

34. Moreover, while conveying all of the previously noted benefits, the Transaction holds no adverse effects for customers in Kentucky. The restructuring and the additional financial support provided by the Lenders to fund the Chapter 11 cases, as well as the carefully crafted Plan, have all ensured that Applicants have been able to continue providing services to their customers without any interruption or diminishment of service quality. Upon the emergence of Windstream from Chapter 11, the Applicants' customers will continue to receive the same services as they do today, pursuant to the same rates, terms and conditions.

35. As a result, Windstream and the Windstream Licensees will continue to have the technical ability to provide reasonable service in the Commonwealth.

B. KRS 278.020(7)

36. KRS 278.020(7) provides in pertinent part that the Commission shall approve a proposed transaction subject to its provisions upon finding that the proposed transaction "is to be

made in accordance with law, for a proper purpose and is consistent with the public interest.”

The Transaction comports with each of these requirements.

37. Windstream operates in an industry that has been and continues to be subject to rapid technological advances, evolving consumer preferences, and dynamic change. The public interest requires that the Applicants increase their financial flexibility by means of efforts like the Transaction to facilitate further investments in network improvements and upgrades that will enable them to continue to provide and enhance the full range of high-quality services they provide to residential and business customers in the Commonwealth.

38. The Transaction will enable Windstream and its subsidiaries to increase their financial flexibility in the highly competitive telecommunications service market that is characterized by stagnant or falling demand and largely fixed costs. If the Applicants do nothing, Windstream will be under growing pressure to increase revenues per line, as line counts are generally declining but many fixed costs remain stable or are growing.

39. The financial efficiencies that will produce lower long term debt and increased free cash flow from the Transaction are expected to help relieve that pressure, and strengthen the ability of Windstream and the Windstream Licensees to continue offering advanced telecommunications services at affordable prices and provide them with greater resources to invest in new services and new uses for the wireline network that should further strengthen their financial position.

40. The Transaction is required by the public interest in order for Windstream to effectively compete and offer the latest technology at levels that meet or exceed that of their competitors and meet and exceed the data and content needs of consumers and businesses, which

are increasing and changing in scope rapidly and significantly. Intermodal competition, between wireline and wireless telecommunications services, is widespread in the territories served by Windstream and the Windstream Licensees. Once the financial benefits of the Transaction are translated into further network investment, the Windstream Licensees' customers will experience no change, other than the expected improvements in service, as discussed previously.

41. Customers will receive at least the same high-quality local exchange and long distance service as they do today, subject to the same rules, regulations, and applicable tariffs. The Transaction will not affect existing price regulation plans, service quality obligations, or tariffs. Further, any subsequent end user rate changes will continue to be governed by the same rules and procedures. Similarly, the terms and prices for existing wholesale services under applicable access tariffs or agreements will remain unchanged as a result of this Transaction. Finally, the Transaction will not affect the terms of any existing interconnection agreements or obligations under state and federal laws regarding interconnection.

42. The Transaction is in accordance with the law. The Applicants are seeking approval, to the extent the Commission determines it is necessary, pursuant to KRS 278.020(6) and KRS 278.020(7). In addition, all filings required by the Commission's Orders in Administrative Case No. 359 and Administrative Case No. 370 will be made. Moreover, as explained above, the Transaction is subject to review and approval by the Bankruptcy Court and the FCC.

43. The Transaction is for a proper purpose and is consistent with the public interest. The Transaction is being proposed to enable Windstream and its subsidiaries, including the Windstream Licensees, to emerge from bankruptcy in a materially better position to improve

their financial flexibility and to reduce their debt, to improve their ability to compete effectively in the marketplace, to continue providing advanced communications and technology services, to continue to make strategic investments to provide enhanced services to their residential and business customers, and to expand their broadband network and to deliver enhanced services.

V. COMMUNICATIONS

44. Inquiries or copies of any correspondence, orders, or other materials pertaining to this Application should be directed by e-mail transmission to those persons listed on the Applicants’ June 1, 2020 Notice of Election of Electronic Filing Procedures.

VI. COMPLIANCE WITH 807 KAR 5:001

45. To the extent the Commission determines necessary, Windstream and the Windstream Licensees respectfully request approval of the Transaction pursuant to KRS 278.020(6) and KRS 278.020(7).

46. Pursuant to Section 14 of 807 KAR 5:001, the Application sets forth the following information:

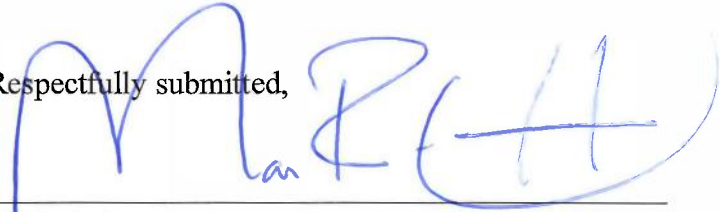
<u>Regulation</u>	<u>Requirement</u>	<u>Pertinent Application Location</u>
807 KAR 5:001, Section 14(1)	Full name, mailing address, and electronic mail address of applicants.	Paragraphs 4 – 8 and Exhibits 3 and 4.
807 KAR 5:001, Section 14(1)	Full Statement of the facts upon which the application is based.	<i>Passim.</i>
807 KAR 5:001, Section 14(1)	Request for relief sought.	<i>Supra.</i>
807 KAR 5:001, Section 14(2)	If the applicant is a corporation.	Paragraph 4

<u>Regulation</u>	<u>Requirement</u>	<u>Pertinent Application Location</u>
807 KAR 5:001, Section 14(3)	If the applicant is a limited liability company.	Paragraphs 4 – 8; Exhibits 1-4.
807 KAR 5:001, Section (14)(4)	If the applicant is a limited partnership.	Not Applicable.

WHEREFORE, for the reasons set forth above, Applicants request the Commission enter an Order:

- (1) Finding that the Operating Companies will continue to have the financial, technical, and managerial ability to provide reasonable service, and that the Transaction is being made in accordance with law, for a proper purpose and is consistent with the public interest and approving the Transaction pursuant to KRS 278.020(6) and KRS 278.020(7); and
- (2) Granting the Applicants all other relief to which they may appear entitled and which may be required to consummate the Transaction.

Respectfully submitted,

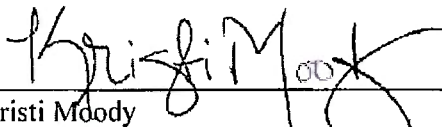


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STATE OF ARKANSAS)
)
COUNTY OF PULASKI

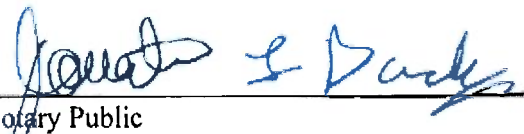
VERIFICATION

I, Kristi Moody, state that I am Executive Vice President, General Counsel and Secretary of Windstream Holdings, Inc. and its applicant subsidiaries (the “Windstream Licensees”); that I am authorized to make this Verification on behalf of Windstream Holdings, Inc. and the Windstream Licensees; that the foregoing filing was prepared under my direction and supervision; and that the contents are true and correct to the best of my knowledge, information, and belief.



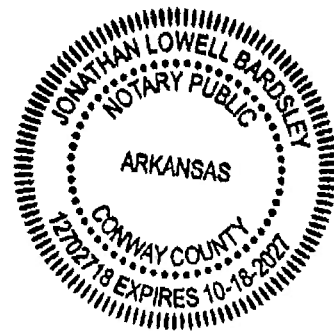
Kristi Moody
Executive Vice President – General Counsel and
Corporate Secretary
Windstream Holdings, Inc.

Sworn and subscribed before me this 29th day of May, 2020.



Notary Public

My commission expires: 10/18/27



Exhibits

<u>Exhibit No.</u>	<u>Description</u>	<u>Corresponding Paragraph</u>
1	State of Delaware Good Standing Certificates of Windstream Holdings, Inc. and Windstream Services, LLC	6
2	State of Delaware certificates of authority of Windstream Holdings, Inc. and Windstream Services, LLC	6
3	Good Standing Certificates, required contact information, and information about the corporate structure of each of the Windstream Licensees	8
4	Certificates of authority of each of the Windstream Licensees	8
5	Current and proposed post-Transaction corporate structure of Windstream and its subsidiaries	19
6	Audited statements of Windstream Holdings, Inc. for the 12 months ended December 31, 2019	26
7	Financial Projections for Windstream Holdings, Inc.	26