



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT PETITION ) ORDER  
OF CAVALIER TELEPHONE MID-ATLANTIC, LLC, )  
AND INTELLIFIBER NETWORKS, LLC, SELLERS AND )  
UNITI GROUP FINANCE INC. AND UNITI NATIONAL )  
LLC, PURCHASERS, FOR APPROVAL FOR SELLERS )  
TO TRANSFER CERTAIN ASSETS TO PURCHASERS ) DOCKET NO. TM20050374

**Parties of Record:**

**James H. Laskey, Esq., Norris McLaughlin, P.A.**, on behalf of Petitioners  
**Stefanie A. Brand, Esq., Director**, New Jersey Division of Rate Counsel

BY THE BOARD:

On May 29, 2020, Cavalier Telephone Mid-Atlantic, LLC (“Cavalier”) and Intellifiber Networks, LLC (“Intellifiber”) (together, the “Windstream Licensees” or “Sellers”), Uniti Group Finance Inc. (“Uniti Group Finance”), and Uniti National LLC (“Uniti National” and together with Uniti Group Finance, “Purchasers”) (Purchasers and Sellers collectively, “Petitioners”), submitted a Verified Joint Petition to the New Jersey Board of Public Utilities (“Board”) pursuant to N.J.S.A. 48:3-7 for Sellers to transfer certain fiber optic assets to Purchasers<sup>1</sup> (the “Transaction”). The Transaction is part of a larger Settlement Agreement between Windstream Holdings, Inc. (ultimate parent company of Windstream Licensees) (“Windstream”) and Uniti Group Inc. to resolve a number of disputes between the two organizations. Windstream and its subsidiaries, including the Windstream Licensees (collectively, the “Debtors”) have filed voluntary petitions for reorganization under Chapter 11 of the Bankruptcy Code with United States Bankruptcy Court for the Southern District of New York (“Bankruptcy Court”). On April 20, 2020, Debtors and Uniti Group Inc., along with their relevant subsidiaries, agreed to enter into a series of agreements intended to settle all disputes between Windstream and Uniti, including an Asset Purchase Agreement (the “Agreement”). Under the Agreement, Uniti Group Finance will acquire certain assets of Debtors’ competitive telecommunications subsidiaries. Prior to consummation of the

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<sup>1</sup> Uniti Group Finance is currently the party that has the right to acquire the fiber optic assets from the Sellers under the Agreement (as defined below). As described below, prior to the consummation of the Transaction, Uniti Group Finance will assign the right to acquire certain of the fiber optic assets to Uniti National.

Agreement, Uniti Group Finance intends to effect a partial assignment of its rights under the Agreement to its subsidiary, Uniti National, such that Uniti National and Uniti Group Finance will each have the right to acquire specified assets from the Purchasers. The Settlement Agreement, including the Agreement and Transaction, was approved by the Bankruptcy Court in an order issued on May 12, 2020. Petitioners state that the Transaction is a necessary component for Debtors to emerge from Chapter 11. Following the Transfer, the same services will continue to be offered in New Jersey at the same rates, terms, and conditions to customers.

## **BACKGROUND**

Windstream Licensees are wholly owned subsidiaries of Windstream. Windstream is a Delaware corporation headquartered in Little Rock, Arkansas. Windstream's subsidiaries, including the Windstream Licensees, provide voice and data services to residential and business customers throughout the United States. In addition, Windstream's operating subsidiaries supply transport solutions on a local and long-haul fiber network currently spanning approximately 150,000 route miles. Windstream does not provide telecommunications services in its own right. Instead, it owns and operates many licensed telecommunications providers in the District of Columbia and all states, many of which also hold authority from the Federal Communications Commission to provide domestic interstate and international telecommunications services. In New Jersey, the Windstream Licensees are authorized to provide intrastate telecommunications Services. See, I/M/O the Petition for An Order Authorizing Cavalier Telephone Mid-Atlantic, LLC to Provide Local Exchange Telecommunications Services throughout New Jersey, Docket No. TE01060370, dated September 27, 2001. Intellifiber Networks, Inc. (f/k/a Elantic) operates in New Jersey pursuant to Board authority originally granted to Dominion Telecom, Inc. on October 6, 2002. See I/M/O the Petition for an Order Authorizing Dominion Telecom, Inc. to Provide Local Exchange Telecommunications Services Throughout New Jersey, Docket No. TE01090594 Order dated October 31, 2002, which was later transferred to Elantic on May 12, 2004, See I/M/O the Joint Petition of Dominion Telecom, Inc., Dominion Fiber Ventures, LLC and Elantic Networks, Inc. for Approval of a Change of Control, Docket No. TM0403019, Order dated May 12, 2004.

Uniti Group Finance is a Delaware corporation, and Uniti National is a Delaware limited liability company. Both are headquartered in Little Rock, Arkansas and each is a subsidiary of Uniti Group Inc. ("Uniti Group" and together with its subsidiaries, "Uniti"), a Maryland corporation also headquartered in Little Rock, Arkansas. Uniti Group is a publicly traded real estate investment trust that engages in the acquisition and construction of infrastructure utilized by the communications industry. Uniti Group does not provide telecommunications services in its own right. It owns and operates a number of licensed telecommunications providers in the District of Columbia and a number of states. As described further below, neither Uniti Group Finance nor Uniti National is currently engaged in the provision of telecommunications services in New Jersey or elsewhere, and as such, neither currently holds a Certificate or other similar authority in New Jersey. The petition notes that Peg Bandwidth NJ, LLC<sup>2</sup>, an affiliate of Uniti National and a Board authorized telecommunications provider may utilize some of the fiber assets transferred to Purchasers to provide telecommunications services in New Jersey through intercompany lease arrangements.

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<sup>2</sup> See, In the Matter of the Petition of PEG Bandwidth NJ, LLC for Approval to Provide Local Exchange and Interexchange Telecommunications Services throughout the State of New Jersey, Docket No. TE12040317, Order dated August 15, 2012.

## **DISCUSSION**

According to the petition, Windstream and its subsidiaries sought voluntary bankruptcy protection under Chapter 11 of the Bankruptcy Code in the Southern District of New York in February 2019. Beginning in August 2019, Windstream and Uniti engaged in mediation overseen by the Bankruptcy Court to address certain claims the organizations had against one another. Subsequently, on April 20, 2020, Windstream and Uniti entered into a settlement agreement intended to address those claims, which will allow Windstream to emerge from Chapter 11. As part of the settlement agreement, the parties have entered into the Agreement, through which Uniti Group Finance will acquire certain Windstream fiber assets currently owned by some of Windstream's competitive local exchange carrier subsidiaries. Specifically, under the Agreement the Sellers and other Windstream subsidiaries will sell roughly 3,966 fiber route miles nationwide to Uniti Group Finance and, pursuant to a partial assignment of the Agreement prior to consummation, to Uniti National. Uniti will then grant an indefeasible right of use ("IRU") to Windstream's subsidiaries having an initial term of 20 years for those fiber assets that Windstream's subsidiaries use to provide services, along with additional fibers to provide Windstream's subsidiaries with spare capacity. Uniti Group Finance and Uniti National will thus have access to sublease or otherwise utilize those fiber assets that are not being granted back to Windstream's subsidiaries.

The petition states that the Transaction will not interfere with the ability of any Windstream company to provide its services. To the contrary, Windstream's subsidiaries will retain access to the fiber assets they currently use to provide service through an IRU having an initial term of 20 years. Uniti Group Finance and Uniti National will be able to lease to their affiliates or third parties or otherwise utilize those fiber assets that are not granted back to Windstream's subsidiaries. Petitioners state that the net result of the Transaction is that Uniti will purchase certain fiber assets from Windstream's competitive local exchange carrier subsidiaries, including the Windstream Licensees in New Jersey. Uniti will retain access to a substantial portion of the fiber assets that are currently unused, and Windstream's subsidiaries will retain access to those fiber assets currently used in New Jersey to provide services to customers, plus additional fibers to provide Windstream's subsidiaries with spare capacity.

Petitioners submit that the proposed Transaction is in the public interest. The Transaction is part of the court-approved resolution of the disputes between Windstream and Uniti Group, and is part of the process of allowing Windstream and its subsidiaries to emerge from Chapter 11. The Transaction is a key component of a settlement between Windstream and Uniti which will maintain access to the fiber assets required by the Windstream Licensees (in New Jersey) and other Windstream entities around the country to serve existing (and potential new) customers. In return, Uniti will receive access to unused fiber assets in New Jersey and elsewhere that it can itself sell, lease, or otherwise utilize. Further, Petitioners have asserted that the proposed Transaction will have no adverse impact on the customers of the Windstream Licensees, and will be transparent to its customers. Immediately following the Transaction, Windstream Licensees will continue to provide service to its existing customers at the same rates, terms, and conditions, as governed by its existing contracts.

The New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments by letter dated June 19, 2020, stating it does not object to Board approval of Petitioners' request should the Board determine after its review that approval is prudent and warranted to ensure the continued provision of innovative, high quality telecommunications services to New Jersey customers.

**FINDINGS AND CONCLUSIONS**

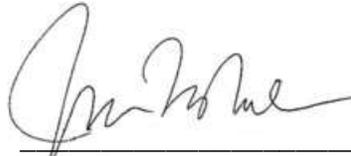
After a thorough review of the petition and all related documents, the Board concludes that there will be no negative impact on service quality to New Jersey customers or the rates they pay. Nor will there be a negative impact on competition. The Board therefore **FINDS** that the proposed transaction will have little impact on competition. The Board additionally **FINDS** that there will be no negative impact on rates or the present provision of safe, adequate and proper service since Petitioners' New Jersey customers will continue to receive the same services at the same rates and under the same terms and conditions and the provision of service quality on competitive offerings is in the public interest. Moreover, a positive benefit may be expected from the transaction as it will eliminate the threat of disruption of service due to Windstream's financial condition.

Accordingly, the Board **FINDS** that the proposed transaction is consistent with the applicable law, is not contrary to the public interest and will have no material impact on the rates of current customers, or on New Jersey employees. The Board also **FINDS** that the proposed transaction will have no impact on the provision of safe, adequate and proper service, and will positively benefit competition. Therefore, after investigation, having considered the record and exhibits submitted in this proceeding, the Board **HEREBY AUTHORIZES** Petitioners to complete the proposed transaction.

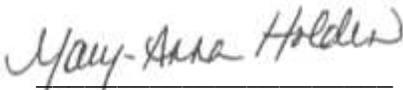
This Order shall be effective July 27 2020.

DATED: July 15, 2020

BOARD OF PUBLIC UTILITIES  
BY:



JOSEPH L. FIORDALISO  
PRESIDENT



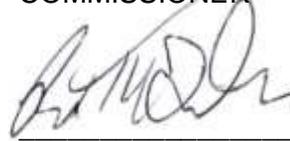
MARY-ANNA HOLDEN  
COMMISSIONER



DIANNE SOLOMON  
COMMISSIONER



UPENDRA J. CHIVUKULA  
COMMISSIONER



ROBERT M. GORDON  
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH  
SECRETARY

**IN THE MATTER OF THE VERIFIED JOINT PETITION OF CAVALIER TELEPHONE MID-ATLANTIC, LLC, AND INTELLIFIBER NETWORKS, LLC, SELLERS AND UNITI GROUP FINANCE INC. AND UNITI NATIONAL LLC, PURCHASERS, FOR APPROVAL FOR SELLERS TO TRANSFER CERTAIN ASSETS TO PURCHASERS  
DOCKET NO. TM20050374**

**SERVICE LIST**

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